
United States
Circuit Court of Appeals

For the Ninth Circuit.

WILLIAM JACKSON SHAW,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

In Two Volumes

VOLUME II

Pages 385 to 581

Upon Appeal from the District Court of the
United States for the Southern District
of California, Central Division.

FILED

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SAM GREEN

a witness for the Government, testified as follows:

Direct Examination

My business is broker, stock and bonds. I have been so engaged since 1917. I am the president of Pledger & Company. That is a corporation controlled by me. Commencing in 1935, I had an account for my concern with Florence Stroatan, and with Louis R. Jacobson, and with Frank S. Tyler, and an account with W. J. Shaw, and with W. J. Shaw & Company. In connection with the Frank S. Tyler account, I had a discussion with Mr. Shaw when I opened that account. He did not have any particular discussion with me in regard to the account. The life of the Frank S. Tyler account was two to three years. That would be '35, '36 and up into '37. I handled the buy and sell orders for my firm. Mr. Shaw gave me the instructions on [233] buying and selling items that came to me in the for sale in the Frank S. Tyler account.

With respect to the Florence Stroatan account, my answer would be the same; and with the Louis R. Jacobson account, the same. Checks paid to the persons whose names are appearing in those accounts would be made payable to the names of the accounts.

Cross Examination

There is nothing improper in running the accounts in the names of the employees that I know of. It is common practice for a person to run an

(Testimony of Sam Green.)

account in a certain name and have somebody else who is actually owner of the account the controller. Especially is that true of a man who, like Mr. Shaw, was engaged in selling securities himself.

FRANCES DOYLE

a witness for the Government, testified as follows:

Direct Examination

In the years 1935, '36 and '37 I was a book-keeper and cashier for Pledger & Company. I kept the records and handled stock certificates, securities, that would come to the office.

Mr. Norcop: All right. I want to prove by Mrs. Doyle that she, which she has already said, that she was a cashier and bookkeeper there for Pledger; that she made the receipts to persons depositing securities with the firm; and that she would give them an original receipt and the books which I [234] have in front of me, some seven of them, would be the carbon copy of the receipt, and that when the transaction was completed, if a sale had been made, that she made out the checks and delivered them to the persons entitled to receive them. Further than that, we have as to both of the transactions named in the indictment the records here of those transactions showing the stock received, what shares, what company, and to whom, as the cus-

(Testimony of Frances Doyle.)

tomers appeared on the Pledger & Company accounts, the check was made payable, and the endorsement of the checks. We have the original checks which are the cancelled checks of Pledger & Company, so that we can trail with respect, I think, to nine or ten of the counts in the indictment the finishing of the transactions. One other thing: May it be stipulated, or do you know, that the checks that the California Bank has rubber stamps on them indicate that they were cashed, that the currency was turned over to the payee and not deposited? I neglected to ask that yesterday.

Pledger and Company's record dated 1/25/37. That the shares of Thomas L. Allen and A. L. Allen, certificate No. 813 of Monolith Midwest, was sold through Pledger and Company on 1/25/37, and paid in the name of the account of Jacobson in the sum of \$327.19 on 1/30/37, and there is an endorsement on the back, L. A. Jacobson; the check shows two rubber stamps on the face of it which I am informed indicates it was cashed and not deposited.

[235]

There are several on this next one. We are misled here because a lady has changed her name since she bought the stock. Her present name and as she testified in the case here her name is Mrs. Hanson of Ventura, and she said when she purchased this stock her name was Angele C. Sutton. The records of Pledger show that on September 10, 1935, under

(Testimony of Frances Doyle.)

the name of Angele C. Sutton there were two certificates of Monolith Portland sold, and, if I read the numbers here correctly, it was 6109 and 6228 were the certificate numbers, calling for 120 shares of stock, and the check was for \$1,396 even and the endorsement is Frank S. Tyler, and that was deposited.

(It was stipulated that these summaries may be read).

On October 10, 1935, Pledger and Company, showing in the account of Frank S. Tyler for another one of our indictment witnesses, who will appear today or tomorrow, Miss Margaret Gaud, there being a total number of 50 shares, if I am correct in my summation of these figures—I won't read the certificate numbers—and on that same day Miss Alberta E. Stearns had three certificates of Midwest, totaling 90 shares, and that is all, together with somebody else's transaction on the same day that we are not concerned with, which was paid in the form of a check to Frank S. Tyler by Pledger and Company in the sum of \$2,155.40, and that was endorsed on a rubber stamp, Frank S. Tyler by blank. There only being one rubber stamp, I assume it was deposited. [236]

On October 16, 1935, a transaction reflecting that Mary M. D. Craig, who testified early in the case, had certificate No. 94, of Monolith Portland—(It was stipulated that the money, as a result of these

(Testimony of Frances Doyle.)

stocks made their way—that is, they were converted and afterwards money went into the account of Tyler).

Mr. Norcop: Here is one check that I desire to introduce because it is the only one that is different.

(Exhibiting document to Mr. Montgomery.)

Mr. Montgomery: We will stipulate that Mr. Shaw's endorsement is on that and it was deposited to Frank S. Tyler. That is all right.

(The document referred to was received in evidence and marked "Government's Exhibit No. 93.")

The Court: This check is a check for \$1,419.72, Pledger & Company, and is made to Frank S. Tyler and is marked "For deposit, Frank S. Tyler by W. J. Shaw."

ARTHUR HUGHES

a witness for the Government, testified as follows:

Direct Examination

I am an accountant-investigator with the Securities and Exchange Commission. I have been so employed since November 1935. Previous to that time I have been the office manager and auditor for a member firm of the New York Stock Exchange for approximately 12 years. All together I have had about 17 years of experience as an accountant. [237]

I first visited the offices of the Consolidated Mines in July of 1936 when I commenced the investiga-

(Testimony of Arthur Hughes.)

tion of this matter. The names on the door were Monolith Portland Cement Committee, W. J. Shaw & Company, and Consolidated Mines of California. I went in the office and met Mr. Morgan and Mr. Tyler and Mr. Jacobson and Mr. Shaw, and Miss Stroatman was also there. I examined the books and records of the Consolidated Mines of California, and also the black book which had records of Tyler's transactions in the Consolidated Mines, or at least the transactions were carried on in Tyler's name. I made an examination of the Tyler black book. I scrutinized each sheet thoroughly and then I footed the sheets—the sheets had already been footed, so I checked the footings and test-checked them—and I also cross-checked the footing to see that they tied in with the totals, and when I was satisfied that they were in balance, then I copied—I prepared a schedule from the black book, using the headings as they appeared in this black book on each column, and copied the totals by months onto my schedules. Exhibit 72 for identification, which consists of three large sheets of columnar accounting sheets are the ones I refer to. I copied all the information that was in the black book as of July of 1936, and then in October 1937 I again visited the offices of the Consolidated Mines, which were then located in Santa Monica.

I met Mr. Shaw downstairs and Jacobson, Shaw and myself [238] went up to the office. We went into Mr. Shaw's private office first, and I told Mr. Shaw what I wanted.

He wanted to know why I wanted it, and every-

(Testimony of Arthur Hughes.)

thing else. After a discussion which maybe lasted half an hour, he brought me out there and he told Tyler to give me the black book.

So Jacobson was along with me and I went and examined the black book and brought my schedules up to date from July 1936 up to October 1937. Mr. Jacobson and I checked my figures to test their accuracy and see whether I had made a correct transcription of what I was copying from the black book. He did not object to anything or say that anything was incorrect.

(Schedules offered and objected to.)

(The document referred to was received in evidence and marked "Government's Exhibit No. 72.")

I prepared such a schedule for 1934, '35, '36 and '37, and then I have summarized them, four years together.

(The document referred to was received in evidence and marked "Government's Exhibit No. 94.")

(Testimony of Arthur Hughes.)

(Received as a summary of figures Objection was overruled).

I likewise prepared from Exhibit 72 a compilation showing a summary of receipts and disbursements as per Frank S. Tyler's book showing net profit from sales of Monolith stock, Consolidated Mines stock, sold for cash and cash taken in on the Tyler agreement for the years 1934, '35, '36 and '37. [239]

(The document referred to was received in evidence and marked "Government's Exhibit No. 95.")

(Testimony of Arthur Hughes.)

GOVERNMENT'S EXHIBIT NO. 95

"SUMMARY OF RECEIPTS AND DISBURSEMENTS AS PER FRANK S. TYLER BOOKS

Showing net Profit from Sales of Monolith Stock, Cons. Mines stock sold for Cash and Cash Taken in on Tyler Agreement:

Receipts	1934	1935	1936	1937	Together
Monolith Sold	\$41,822.69	\$27,142.16			\$68,964.85
Midwest Sold		37,828.94	\$13,760.06		51,589.00
Consolidated Mines Sold for Cash.....			800.00		800.00
Cash Received on Tyler agreement.....	5,237.00	10,797.72			16,034.72
Dividend on Monolith.....	667.50	499.00			1,166.50
Pledger & Co. 'Loans'			8,050.00		8,050.00
Total Receipts	\$47,727.19	\$76,267.82	\$22,610.06		\$146,605.07
Disbursements					
Monolith Stock Bought.....		\$ 8,301.41	\$ 1,653.00		\$ 9,954.41
Mine Expenditures	\$14,528.42	24,069.36	9,728.31	\$285.00	48,611.09
Office Expenses	2,778.17	5,998.85	4,057.97	51.50	12,886.49
Monolith Dividends Refunded.....		110.00			110.00
Salesmen's Commissions	2,155.91	85.00			2,240.91
Total Disbursements	\$19,462.50	\$38,564.62	\$15,439.28	\$336.50	\$ 73,802.90
Net Profit per Tyler Books.....	\$28,264.69	\$37,703.20	\$ 7,170.78	\$336.50*	\$ 72,802.17'

*Indicates red figures.

(Testimony of Arthur Hughes.)

(Objection was overruled).

This schedule reading, "Statement Showing Net Profit to Shaw and Tyler from the Mining Deal" was not prepared entirely from the schedule or Exhibit 72. I used all the other information I could gather during the course of the investigation, such as, the books did not reflect all of the transactions.

As to what is in the compilation that isn't reflected by the books of the Consolidated Mines or the Tyler black book—there is Mrs. Pew's transaction which amounted to \$30,000 additional income, and there is Mrs. Franklin's property which she placed a value of \$6,000 on, and then there is a second piece of real estate taken from another party which was eventually sold by Mr. Shaw for \$4,000, so there is \$40,000 in addition to what is shown in the black book. The \$50,000 appeared in the black book, but I did not examine it, because Jacobson told me there was nothing in there which concerned the Consolidated Mines. I have a schedule compiled entirely from accounts in the black book and accounts in the corporate books.

(The document referred to was received in evidence and marked as "Government's Exhibit No. 96.")

(Testimony of Arthur Hughes.)

ARTHUR HUGHES

testified further as follows: [240]

Direct Examination (Continued)

This compilation is a schedule showing the loss, sustained from operations of the Consolidated Mines property for the years 1933 to 1938, and it was taken from both the Frank S. Tyler records and the Consolidated Mines records.

(The document referred to was received in evidence and marked "Government's Exhibit No. 97.")

That is for 1933 through 1938—that is really six years inclusive, but there is very little in '38 and very little in '33. The next compilation in order is a profit and loss statement for the years 1936 and 1937 as taken from the Consolidated Mines Corporation records, and has nothing to do with the black book.

(The document referred to was received in evidence and marked "Government's Exhibit No. 98.")

This third sheet is an analysis of the profit and loss statement for the year 1936 by months showing the profit or the loss for the year by months, taken from the corporation's records, Consolidated Mines of California.

(The document referred to was received in evidence and marked "Government's Exhibit No. 99.")

(Testimony of Arthur Hughes.)

The fourth sheet is a compilation of the profit and loss for the year 1937, and I have analyzed it by months the same as I have done in 1936. The records show a loss for the month of May. Labor costs are made up by a large sum of money that is shown in Gilbert's name as having been sent to the [241] mine.

(The document referred to was received in evidence and marked "Government's Exhibit No. 100.")

Cross Examination

(Questions by Juror Meredith)

I am not a C. P. A. I did not take an examination for it.

J. DALE GOING

a witness for the Government, testified as follows:

Direct Examination

I was employed by Mr. Shaw in the year 1937 down in Santa Monica on the Consolidated Mines of California books. I made entries in the books as bookkeeper. In front of me is the cash receipts record of that corporation and check record and journal. I have made entries in there, in the cash receipts, check record, and journalized payroll. I made entries there closing the year 1937. I believe I saw one place of handwriting other than my own

(Testimony of J. Dall Going.)

after I had completed my entries. I saw several penciled notations, and I believe there was one in ink. They were not mine. I have also examined the journal ledger of that corporation in which I have made the postings, for the period that I have just described.

Cross Examination

Mr. Shaw didn't look at the books very carefully himself. I don't believe he ever looked them over with me. [242] If there was anything I didn't know or understand, I would ask Mr. Tyler, and then Mr. Tyler, if he didn't know, would consult with Mr. Shaw. I consulted Mr. Tyler many times, when I first started. Mr. Wikoff was in the office possibly a month before I left. I did stenographic work. I did more stenographic than bookkeeping. Mr. Shaw was out quite a bit of time, sometimes a week, sometimes two weeks. I was informed that he was ill, and I know that I ordered insulin and received it when it came in.

W. J. MORGAN

a witness for the Government, testified as follows:

I retired from active business a number of years ago, but we had some investments that apparently were getting into difficulties, so I began to look into this Monolith Company down here that we had money invested in, and found a very bad state of

(Testimony of W. J. Morgan.)

affairs there, and it resulted in the organization of the Monolith Stockholders Committee, of which I became chairman, and I think this is the ninth year now that I am on the job and still on the job. That is my present occupation, cleaning up a few ends here and there that were left over by the executive committee and Mr. Shaw, and I presume the matter can be cleaned up probably in another month or two; at least I hope so. In the month of December of 1933, I was so engaged, on the Monolith Stockholders Protective Committee.

At that time, 1933, they were in a bank building— [243] a part of 1933 they were in San Francisco. Some time during 1933 they moved to Los Angeles, or Hollywood, and they occupied offices in the bank building on the corner of Hollywood Boulevard and Highland Avenue. They were there most of the balance of 1933. They moved from Hollywood into the Financial Center Building for a few months—and then they moved to the Banks-Huntley Building on Spring Street. I was making my permanent domicile in the Hotel Oakland in Oakland, California, and had been for 26 years.

About December 19, 1933, I was in Oakland. I received a letter from Mr. Shaw about December 20, 1933. This document is a carbon copy of that letter.

(The document referred to was marked "Government's Exhibit No. 101 for identification.")

(Testimony of W. J. Morgan.)

GOVERNMENT EXHIBIT No. 101
"STOCKHOLDERS COMMITTEE
of the
MONOLITH PORTLAND CEMENT CO.
MONOLITH PORTLAND MIDWEST CO.
704 South Spring Street
Los Angeles, California

Dec. 19, 1933.

"Mr. W. J. Morgan,
Oakland, Calif.

Dear W. J.:—

"I am very anxious to talk to you about the proposed corporation that we are going to form very soon to take over the gold mining properties. I feel quite positive that we have something real in these properties and can make a lot of money. If my plans materialize, you can join us without advancing any money as I feel confident that you and I can work together on this deal without conflict. As I stated to you in Oakland, I would not approach Mrs. Morgan to enter into this deal in any way. She has lost so much money that I do not believe that she trusts anyone and in one way you can not blame her. Of course, on the other hand, she certainly needs your advice and all of our help to realize as much as we can on her stock along with all the other members of the Committee.

"What I propose to do is to organize a com-

(Testimony of W. J. Morgan.)

pany immediately and place the corporation in a position to receive funds, and completely equip the plant which is now on one of the properties with up-to-date machinery which will not cost much as I am informed that we can get into production and start making good money within ninety days. We could use part of these profits to develop the big property, so you can see that we would not need very much money to carry out our plans.

“With kindest personal regards to you and Mrs. Morgan, I am

Sincerely,

(Signed) “JACK”

“S/K”

(Examining document) I received that letter through the mail. I received it from Mr. Shaw.

(By Mr. Montgomery):

Mr. Shaw typed it himself.

(The document referred to was received in evidence and marked “Government’s Exhibit No. 102.”)

Mr. Norcop: This letter is on a plain sheet of white paper, no letterhead, and the handwriting at the bottom is signed with the word “Jack.”

“I sent you a letter some few days that we cannot collect any more money and all collec-

(Testimony of W. J. Morgan.)

tions that might come in must be deposited with the trustee which was appointed by the court and any costs that are paid must be turned over to this trustee and sent direct to the shareholders. [244] Consequently the committee has no money and I am paying rent and expenses.”

“The boys are getting ready for the gold mine. It certainly looks good. The report is fine and I am planning on coming north within a few days and we will go from Oakland to the mines. You may expect a wire from me most any time that I am leaving from Oakland. I have no help here so please excuse typewriter mistakes and haste. Will explain everything when I see you.

“Best regards.

“(Signed) JACK.”

(By the Witness)

I received another letter dated February 1, 1934, on the stationery of Dos Cabezas Company, cement products, through the mails.

(The document referred to was received in evidence and marked “Government’s Exhibit No. 103.”)

Mr. Norcop: “Feb. 1st, 1934.

“My Dear W. J.

“Mrs. Davidson has no further work to do and has left. The Court has ordered all collec-

(Testimony of W. J. Morgan.)

tions turned over to a Trustee but nothing is coming in. The Boys have not made any calls since you left. Consequently the Committee is without funds and can't collect any. I personally advance the auditors \$750.00 in cash to start the Midwest Audit. We will not be able to know how they are coming along until [245] they file the report with the Court.

“I am glad to hear how the Diggs report started. I knew there was nothing it. However, I know that he can do nothing more or not as much as we can. We are still waiting for Judge Shinns decision, and will advise you the day it is made. I have the best Engineer I could find to make a report on the Mines and he will have it complete by Monday. I am very anxious to see it, as we will know just where we stand, and if it is alright in every way we will get together and make some money for ourselves. I think that we need Charley with us and please explain both situations to him, and that we will be on our way very soon. We should arrange to meet in Jackson, providing that the Mines are reported to be a very good thing. If they are not I have another deal that you will like. We must go to work for ourselves and there very quickly.

“Sincerely,

“JACK (signed).”

(Testimony of W. J. Morgan.)

And then in handwriting: "Please excuse my type-writing."

(By the Witness)

I signed the Tyler partnership agreement. I didn't personally own any stock. My wife's stock was transferred into my name during the trial. The boys seemed to—Mr. Shaw seemed to think that I ought to be put in a position where the men soliciting subscriptions to the committee could say that I held a certain amount of stock. Well, of course, [246] it being my name, I did hold it, but it was really my wife's stock. And that had been transferred back to her in December of 1933.

I have seen this card before. It is in Mr. Shaw's handwriting. On the reverse side of the card is my handwriting. I had a discussion with Mr. Shaw about the Tyler agreement and my becoming party to it before I affixed my signature thereto. That was in the Banks-Huntley Building. I think there were others there, but I don't recall who they were. Mr. Shaw owed me some money and I had been trying to get a settlement out of him for a long time, and finally when this Tyler mining proposition came up Mr. Shaw says, "Would you accept a settlement of 643 shares of preferred Monolith Stock?" and I think it was sixteen hundred and some-odd dollars in cash, a settlement with me.

I said, "Yes."

(Testimony of W. J. Morgan.)

“Well,” he says, “would you put that into the Tyler mine if I hand it over to you?”

“Well,” I says, “yes.”

So he asked me to sign the Tyler agreement. Well, there were a lot of people signing up there that belonged to the committee that didn't think much of their stock at that time, and so I put my name on there with that understanding, and I got his card there at that time. (Examining document) That is the number of shares he proposed to give me. That is Mr. Shaw's handwriting. That is my handwriting on the [247] back, the memorandum.

(By Mr. Montgomery:) The handwriting on the front of both cards is Mr. Shaw's.

(The documents referred to were received in evidence and marked “Government's Exhibit No. 104.”)

I made a trip to the Porteous mines in December 1933. Mr. and Mrs. Shaw and Mr. and Mrs. Tyler and myself went up there and inspected the properties. I made one trip to the McKisson mine. It was about two or three months after it was opened up. I think that was about the time that the Tyler agreement was signed. This letter on the stationery of W. J. Shaw, dated February 22, 1934—I received through the mails from Mr. Shaw.

(The document referred to was received in evidence and marked “Government's Exhibit No. 105.”)

(Testimony of W. J. Morgan.)

Mr. Norcop:

“February 22, 1934.

“Dear W. J.

“I have just sent you a telegram and will rush this to you with enclosed check for \$100.00 and you can give Charley \$25 and tell him that we can arrange money matters on arrival. We have plenty to do from here on and not only look after some important matters for the stockholders but get in to a real business of our own and make up for the lost time that we have been losing. You will be surprised to see the work we have done on the mine that you did see. I won't tell you much for I want you to see for yourself for I know that no one can sell you *are* tell-you *and* thing about a Gold mine and that you must see for yourself. I [248] have a Special report from one of the best engineers in California, in fact have two reports, and they are fine. We will have our plant finished and operating in ninety days and should be making plenty of money. Mr. Tyler and Gilbert will meet you at the Hotel in Jackson at Noon tomorrow (Friday). The mine is only Eighteen miles from Jackson and a good highway. This should put you in here some time Saturday and please phone me on arrival. Tele-

(Testimony of W. J. Morgan.)

phone Malibu 26362. Will be waiting for your call.

“(Signed) Jack.”

I neglect to say that the stationery was: “704 South Spring Street, Los Angeles.” That is the Financial Center Building if my recollection serves me correctly.

(By the Witness)

On February 26, 1934, I had a conversation with Mr. Shaw. I recall that no one was present. I wouldn't say whether that was in the Banks-Huntley Building or the—it might have been in the Financial Center Building. Wherever we had our offices at that date.

I had been talking to Mr. Shaw about a settlement, and brought the matter up so often that finally he said to me, “Well, suppose I settle up with you and give you so much stock and so much money, that will equal so much, and that is about what I owe you. Would that be satisfactory, if I give you that, and would you turn that over and sign the Tyler agreement and put it in the Tyler mine?”

[249]

I said, “Yes.”

We signed up those documents there, wrote that letter, and Mr. Shaw signed that card and I signed the Tyler subscription. The card reads “To W. J. Morgan. You can cancel your agreement with Tyler if I do not accept your settlement with me of date.”

(Testimony of W. J. Morgan.)

That is the same date as the letter. The second card is in Mr. Shaw's handwriting. Reading: "J. Morgan, Cash 1607. Stocks 643."

(Copy of Tyler Agreement produced.)

(The document referred to was received and marked "Government's Exhibit No. 106 for identification.")

As to this letter dated June 10, 1936, on the stationery of W. J. Shaw & Company, addressed to W. J. Morgan, care of the Hotel Oakland, Oakland, California—I received that letter, on or shortly after the date it bears through the mails.

Mr. Norcop (reading from the letter):

"Business here, as you know, is so dull"—

"About the only thing we are waiting on, is for the McKisson Mine to get onto a dividend basis; so I have about decided it would be best to turn the offices over to him, and probably get a cheap office in Santa Monica for the summer months."

(The document referred to was received in evidence and marked "Government's Exhibit No. 107.") [250]

(Testimony of W. J. Morgan.)

GOVERNMENT'S EXHIBIT No. 107

“W. J. Shaw & Co.
Investments
634 South Spring Street
Los Angeles

“TRinity 9606
Established 1914
June 10, 1936”

“Mr. W. J. Morgan
c/o Oakland Hotel
Oakland, California

“Dear Mr. Morgan:

“Upon my return to the office Monday morning, I learned that you had hurriedly gone to Oakland, and I assume that it was in connection with the packing plant idea, which I think is a good one.

“I have had another talk with Mr. Burton and he is willing to take over the offices, as he has another receivership job that he is auditing; and by their paying part of the office expense, he will be able to take care of the whole load.

“Business here, as you know, is so dull—about the only thing we are waiting on, is for the McKisson Mine to get onto a dividend basis; so I have about decided it would be best to turn

(Testimony of W. J. Morgan.)

the offices over to him, and probably get a cheap office in Santa Monica for the Summer months. I don't seem to be improving in health, and in my opinion, I could run all the business through this cheap office in Santa Monica, and at the same time, recuperate so that I will be able to do some real constructive work in the Fall. From now on, the only thing left will be outside work—raising sufficient money to keep the situation in shape.

“I think I shall go ahead and do business with Burton, since it meets with your and Mr. Wikoff's approval. I had another talk with Wikoff and he thinks the idea is splendid.

“Syvertson informs me that the hearing of the demurrers in his suit has been put over for about three weeks.

“I don't know what your plans are—whether you have any other business here in Los Angeles or not. If you haven't, then with your co-operation stationed at Oakland, you could be close to the mine to check up on the situation, when as and if, it is necessary.

“Nash, at Watsonville, has a couple of parties who want to go to the mine, and also the Goulds of Oakland. We have written them that we expect to be there this week-end; and will go, if we receive word from them that they will meet us. If our plans materialize, will wire you and have you meet us in Jackson. In the event they cannot go this Saturday, they will probably be able to go next week.

(Testimony of W. J. Morgan.)

“With kindest regards to you and Mrs.
Morgan,

Sincerely,

(Signed) W. J. Shaw.

WJS:S

W. J. SHAW”

(By the Witness)

This carbon copy of a letter dated August 16, 1934, addressed to W. J. Shaw, 634 South Spring Street, Los Angeles, California, entitled “Dear Jack,” and on the reverse side “W. J. Morgan,” and below that a blank line, is a true and a carbon copy of a letter I addressed to Mr. Shaw on or about that date. I mailed it to him. After receiving the card on which Mr. Shaw wrote the statement that was read awhile ago, I withdrew from the Tyler agreement. I was never a stockholder in the Consolidated Mines of California. I was an officer; Executive vice-president. I had a conversation with Mr. Tyler regarding his constructing a mill on the McKisson property, after I had put my name on the Tyler agreement. I have talked with Mr. Shaw about Mr. Tyler’s building the mill on that property. I don’t recall just the particular occasion. There was talk about the mill on a good many different occasions. I talked to both Tyler and Shaw about that subject. I can say definitely that it was understood in the contract, and so understood among everybody there, that Mr. Tyler was to put the mill

(Testimony of W. J. Morgan.)

up at his own expense. That was part of his agreement. Mr. Shaw told me that Tyler would build that mill out of his own—out of the avails of the——

MARGARET GAUD

a witness for the Government, testified as follows:
[251]

Direct Examination

I live at 329 North Kenmore Avenue, Los Angeles. I am a retired teacher. I was a stockholder in the Monolith Committee. I had 25 shares of the Monolith and 60 of the Midwest. I went into the suit. I put in with the rest of them. I paid 50 cents a share. I later became acquainted with the Consolidated Mines or the mining enterprise.

In December of 1934, Mr. Alexander came out to the house on three different occasions. When Mr. Alexander called, Miss Stearns was present. Mr. Alexander came alone. We had three different conversations. In the first conversation, Mr. Alexander spoke of what he thought that we all had agreed that the Monolith stock after the suit seemed quite valueless and that the men in the Stockholders Committee thought out this plan to help the people to gain back what they had lost on the Monolith if we would turn over our stock to them and take the stock of the Consolidated Mines. I think the

(Testimony of Margaret Gaud.)

first day of December that he came the first time, and then within a very few days again. During the second conversation, Miss Stearns and I were present. We said absolutely that we would have nothing to do with it because we didn't think much of gold mines as an investment. I again saw Mr. Alexander in December of 1934; just before Christmas. I keep a daily diary. It is right here in my book (indicating) Mr. Alexander was there first on December 1, 1934, and then on December 4, 1934, and again on December 22, 1934. Then [252] on December 26th we went down to the office to see Mr. Shaw. Up to December 26th, I had not yet transferred my cement stock over into the gold mining stock. On December 26, 1934, I had a conversation with Mr. Shaw. There was present just Miss Stearns and Mr. Shaw and I. The conversation was that of course we had attended the Monolith trial and had followed it right through and had gotten the idea because Mr. Coy Burnett was still left in charge of the company that the stock was not of much value and he spoke and gave us very glowing accounts of this new venture. Mr. Shaw gave me these glowing accounts of the mining venture. And he spoke—Mr. Alexander had spoken of the McKisson mine.

Mr. Shaw repeated that the Monolith stock was practically valueless, and that this mine had—he gave us very glowing reports of this mine and what might be expected from it, that we would gain back

(Testimony of Margaret Gaud.)

all that we had lost in the investment in the Monolith Company, that within a year there was no doubt at all that we would have dividends, that we would gain back all that we had put into the Monolith stock and probably very much more. I relied upon the statements of Mr. Shaw.

We knew Mr. Morgan simply as the—I believe he was the chairman of the Monolith stockholders committee, and we had quite a high opinion of both Mr. Morgan and Mr. Shaw. We thought they were men of ability and men of integrity. And Mr. Shaw repeated what Mr. Alexander had already told [253] us, that Mr. Morgan had turned over his Monolith stock and gone into this mining venture. I don't remember that he said very much about the gold ore at that visit, but he spoke of the—well, he spoke of it being valuable property. Mr. Shaw said they were to spend the money derived from the Monolith stock in developing the mining property. As to this letter on the Consolidated Mines of California addressed to Miss Margaret Gaud, Los Angeles, and signed by Frank S. Tyler, and dated July 1, 1937,—I received that through the United States mails.

I made an exchange of my stock in the Midwest and the Monolith for gold mining stocks in the Consolidated Mines. It was in October 1935 that we turned in the Midwest stock. As to the Monolith—Mr. Alexander came out to the house and got our stock on December 27th, the day after we talked with Mr. Shaw. I had an agreement with Mr. Shaw

(Testimony of Margaret Gaud.)

to make the transfer. I received 175 shares of the gold mining stock for my *Monolith*. I traded my *Midwest* in October 1935. I made that deal with Mr. Shaw. He was the only one to whom we talked about it. It was on October 3, 1935, that we went down to the office in response to a telephone call from Mr. Shaw. He told us at that time that the *Midwest* suit, which we had gone into, was very likely to drag along for several years probably and it was quite unlikely that we would ever recover anything through that suit, so we decided then to turn over the *Midwest*. I turned over 60 shares of *Midwest* [254] for which I received 60 shares of the *Consolidated Mines*.

Cross Examination

This memoranda is just copied from my book. I have my book here. This is a copy of what is in my book. I remember quite well what this man said and what the other man said, back in 1935. That is, I don't remember exactly the words that were said, but I remember the gist of the conversation. I have gone over these matters with the *United States Attorneys* here, several years ago. Recently, I just read over what we wrote—what we said at that time, several years ago. Several years ago, I talked to Mr. Hughes and Mr. Roger Kent. Roger Kent is in the office in *San Francisco*. I forget just what his office is. (Producing document) July 29, 1935, the 175 shares of *Consolidated Mines of Cali-*

(Testimony of Margaret Gaud.)

ifornia were issued. I received those for the 25 shares of Monolith. It took about six months for my stock to get out here. As to what happened to them in the meantime—I don't remember that I inquired about it. We went into the office quite often, or occasionally, rather, to see Mr. Shaw and it seemed to me there was something about—well, I wouldn't dare say why we didn't receive it, but we had reasons. But he had reasons why we didn't. He seemed satisfactory to us. We still thought Mr. Shaw was a man of integrity. He told me about this stock, the Monolith—that it was practically valueless. No one else told me that except Mr. Alexander. We have found out since that it was [255] not valueless. Quite a number of men came to the house wanting to buy it from us at various times during those years, and also we noticed since then that the Midwest has paid dividends. I saw that in the Los Angeles Times. I believe it when it makes such statements as that.

ALBERTA E. STEARNS

a witness for the Government, testified as follows:

Direct Examination

I live at 329 North Kenmore. I am a retired teacher. I owned stock in the Monolith. 25 of the Monolith preferred and 90 of the Midwest. I do not still own my Monolith stock, or my Midwest. I

(Testimony of Alberta E. Stearns.)

transferred it to the Consolidated Mines of California—for stock in the Consolidated Mines of California. I was informed about the Consolidated Mines of California in December. I think it was the first day of December of '34 that Mr. Alexander called. Mr. Alexander came on the first day of December and again on the 4th, then on the 22nd; that was the third visit. I heard the testimony of Miss Gaud. I was present during the visits of Mr. Alexander to my home. I heard the same representations made that Miss Gaud testified to. I went with Miss Gaud down to the office on the 26th of December, and visited with Mr. Shaw. I don't think my testimony as to the interview with Mr. Shaw would be any different from what Miss Gaud testified to. I remember that he spoke of the mine and of the great advantage to us in the transfer of stock from the Monolith to [256] the Consolidated Mines, and that we would probably receive dividends within a year. I relied upon Mr. Shaw's statement. The Monolith preferred I transferred at that time. On the 26th of December, I transferred 25 shares of the Monolith preferred. I received 175 shares of gold mining stock. I did not trade my Midwest in on the 26th of December. I did not make that exchange until October of '35. I turned in 90 shares and received 90. I keep a daily diary.

As to Government's Exhibit 83 on the Consolidated Mines of California stationery, July 1, 1937, addressed to Mrs. Alberta E. Stearns, which should

(Testimony of Alberta E. Stearns.)

be "Miss", and at Los Angeles, California, and signed by Frank S. Tyler, I received that letter through the United States mails. And this envelope marked Los Angeles, California, July 3, 1937 is the envelope in which I received the letter.

Cross Examination

I have my diary with me. (Producing diary) There is this one (indicating). "Mr. Alexander called," and further on November 30th, Friday, '34: "Mr. Alexander out for exchange of Mon. stock." "Mon. stock," that is Monolith. The next one is on the 4th of '34. "Mr. Alexander called again for answer on gold mine proposition." And the next one is December 22nd. "Mr. Alexander here about the mine. M downtown." That means Miss Gaud was not at home at that time. And the 27th—26th and 27th. 26th: "Mr. Shaw office about Monolith stock transfer. Bought" [257]

Thursday: "Down to Mr. Shaw. Sold" "Turned over Monolith stock on the mining deal." That is December 27th. This was December 27th I turned in the 25 shares of Monolith and, of course, the gold mining stock came later. Here is one for the 11th day of November 1935 for 90 shares. The first certificate that was issued was called in because it lacked the notation of non-assessable. This stock was non-assessable and fully paid, fully voting. That wasn't on my first certificate. My first certificate is 175 shares. Then we returned that to the

(Testimony of Alberta E. Stearns.

office and—non-assessable, right here (indicating). Fully paid, full voting and non-assessable. These certificates were issued afterwards. The first certificates issued by the company were called in because they did not conform to all the rules of the Corporation Commissioner, I think and then these were new certificates, which were issued. My first certificates for 175 shares didn't have this typewritten memorandum nor did it have this fully paid, full voting and non-assessable on it. That is why that was exchanged.

I went frequently to the office to make inquiries about the progress that was being made at the mine, and also about the progress being made in the Midwest suit. I saw Mr. Shaw frequently, and talked with him. I may have said that I wasn't satisfied, that I was disappointed that we hadn't received dividends before that time. I think he encouraged us to think that the work was going ahead as well as could [258] be expected. I never went out to the mine myself.

There was only one stockholders' meeting that I attended. I believe it was in '39.

I never talked with Mr. Morgan. I saw him frequently in the office, but I never talked with him. I talked always with Mr. Shaw—once I think with Mr. Tyler, just simply asking for information about the progress being made.

Miss Gaud and I live together.

W. J. MORGAN

further testified as follows:

Cross Examination

Before I entered into this partnership agreement of Tyler's, Mr. Shaw owed me something over \$6,000. It came about in this way: Mr. Shaw asked my wife to put her stock in my name. It was for the purpose of being able to say that Mr. Morgan held a certain amount of stock. If I was going to head the committee, he thought it policy to have me holding a certain amount of stock.

Well, the way to go into that was to have my wife's stock transferred into my name, and that made me hold a certain amount of the stock. That was done. I did not exactly know what I was doing. If I had, I don't think I would have done it because I woke up to the fact that it disfranchised me from having a right to receive directly from the committee any compensation.

After I found that out, I called Mr. Shaw's attention [259] to it.

"Oh," he said, "I hadn't thought of that, either, but," he said, "I see the position that you are in now." He said, "Well, I will tell you, W. J., I will fix that. I don't know what I am going to get out of it, but I am assuming a rather important position here of chief investigator and I think that that will be fairly well compensated by the judge, and whatever it is," he says, "I get out of it, I am going to split that 50-50 with you."

(Testimony of W. J. Morgan.)

Well, I let it go at that. I said nothing more about it, but just let it go at that.

Then after it was all over, why, nothing was offered me, and so forth, and there I had put in all those years' work, and so I—after Mr. Shaw got his money from the court—I thought it nothing more than proper that he keep his word. He got his money from Judge Shinn. He got \$12,000 fixed by the judge as a reasonable compensation for all the work he had done in the committee.

He took that money without any protest, but it seems that he had made a \$40,000 contract with the executive committee which, at the time, I didn't know anything about. I was not on the executive committee. I was never on it. I thought he owed me \$6,000. And that is the \$6,000 that I turned over for the mining stock. I didn't know what he was going to get. He didn't know himself. According to the statement that was made, what the judge would allow him, but [260] he assumed on account of the important work, collecting testimony and so forth, or rather data through sustaining the suit that it would probably be a substantial sum, and he said, "Whatever it is, well it is 50.50." I signed this Tyler agreement, I think it was along in February 1934. I think I was one of the first signers on there, if I remember right, that it was probably about the time the agreement was signed. There doesn't seem to be any dates set opposite the time that people signed here. There is only the date of

(Testimony of W. J. Morgan.)

the agreement. I don't know just how much later than that it was signed to be exact. I was paid \$6,000. I got the money. I didn't approve of the \$12,000. I had nothing to say about it. It was just an award of the court. If I wanted to consider the proposition from the standpoint of what actually happened subsequently, why, I would have instead of \$6,000, I would have about \$20,000 coming to me, because Mr. Shaw really got \$40,000 out of the committee instead of \$12,000.

I am not resentful against Mr. Shaw except where I feel I have a right to resent things that have happened. I never allow those things to embitter me. Mr. Shaw and I are on speaking terms. We have been on speaking terms all of the time I have been suing him. I had a suit on an accounting suit and we have always exchanged "How do you do's" when we meet and so forth. It is just a question of getting things straightened out, and I am not the judge in the matter and [261] so I passed it all up to the court to see whether he or I was right. I passed it up to the court to decide the accounting suit and I got a judgment for \$34,478 against Mr. Shaw. That was the result of the accounting suit.

As to whether I was giving my time and money for nothing—some of the people may have made that statement. I don't think I told anybody that I had an agreement with Shaw that I was to get a 50 per cent cut on what he was getting as an

(Testimony of W. J. Morgan.)

investigator during that entire period that the allowance was made.

As to whether I signed an approval of the \$12,000 that was to be paid to Shaw in the matter of the settlement—I will correct that there. I presume that some papers were offered to me to sign there in settling all that business up. I presume I did. (Examining document) That is my signature. That is all right. My memory was a little bit— (Pause)

(Letter received in evidence.)

(This was a letter written by Haight & Triplett, attorneys for Monolith, and outlined the terms of settlement.)

That was handed to me. I know the contents. I read every line of it. This was the authority for Haight and Triplett to settle the lawsuit; and without it, he had to present this or something like it to the court on behalf of the committee before he would be allowed to settle the suit. Because the judgment had already been rendered.

I remember seeing here that at the end here, "The [262] defendant offers to pay into the Monolith Portland Cement Company the sum of \$225,000 cash, out of which sum he agrees that the subscribers of funds to the Monolith shareholders committee, both Monolith and Midwest, shall be reimbursed their full 50 cents per share contribution, and out of which their attorneys' fees and costs of action shall be paid, including the payment of Ly-

(Testimony of W. J. Morgan.)

brand, Ross Bros. & Montgomery, the amount of its unpaid bill and the \$12,000 payment to W. J. Shaw. That was done. I don't know whether Haight knew I was getting 50 per cent cut of that.

Mr. Shaw had made a contract with the executive committee to pay him \$40,000 for representing them as chief investigator, and he collected all of that and \$34,000 besides.

I knew nothing about the contract when it was made, but about three or four months afterwards I heard about it. In fact, I saw it, and then after the judgment was rendered for \$820,000 it was put up to me to endorse it, and I thought, "Well, if we collect \$840,000 from Burnett, why, I don't suppose that the \$40,000 is so much out of the way, after all." But later on Mr. Shaw was insisting upon a settlement there with Burnett for \$225,000 instead of \$820,000, I thought that he should reduce that amount of that contract proportionately with what was coming out of it. That was put up as all that Mr. Burnett could raise under the circumstances, because he had to go through that depression like everybody else and was supposed to be very materially affected by it, [263] and that was given out by Haight & Triplett to me as all that Burnett could raise. They worked on me for some time there. I was reluctant to sign that settlement, and finally I wasn't getting anywhere and I finally signed that.

I signed up for \$1,607 cash and 643 shares in the Tyler partnership agreement simply because that

(Testimony of W. J. Morgan.)

was what Mr. Shaw offered me. He says, "Suppose I turn over to you 643 shares of preferred stock and so much money. Would you settle with me and turn that over into the Tyler agreement?"

I said, "All right."

I don't know how he arrived at that 643. It was his figuring; not mine. That stock was supposed to represent about—well, it originally was \$10 a share; that is what it was bought at. My wife had 640 shares of preferred stock in the Monolith. I don't know any more than the man in the moon why he made it 643. It was just his figure. He wrote it down there in his own handwriting on the card. That is evidence of that. I am sure I got that at that time, February 6, 1934, the time that is designated here. I didn't get it a year later. I don't recall that I advanced any moneys to the committee myself.

I think Mr. La Grange put up a little. Mr. Shaw, I think, borrowed a thousand dollars from Mr. Harding personally, and I suppose at that particular time that the committee got some of that money, because office rent had to be paid and some stationery got out, and all that sort of thing. [264] Mr. Shaw did advance moneys from time to time; some little money, to start off with. There were books of account kept, Mr. Harding was the bookkeeper. The committee books are, I suppose, in the hands of the court. We had the books when we were trying that case before Judge Gould down here, accounting case. Mr. Shaw occupied the position of—well,

(Testimony of W. J. Morgan.)

styled chief investigator with the committee. Later on, he got the title from some resolution that was passed by the executive committee of executive secretary. I should say that Mr. Shaw was the man that took the first steps in the organization of the committee. I helped organize it. I became a straw man, I think, more or less. All I could do for the time being there was to make a great big roar any time that I saw something was going wrong, and if it took effect, all right, and if it didn't why, I had to abide by the consequences. But, as a rule, it did have some weight, and I managed to pilot the thing through and we came out very successful in the end.

I approved a good many minutes of meetings that were held.

I never did resign as a member of the committee.

Government's Exhibit No. 102 bears no date. I don't think I find anything false in there. I got expenses, my hotel when I came down here. I got about a hundred dollars a month to pay hotel expenses while I was in Los Angeles up to the time I came down here when I had never drawn more than \$50 a month. That was for the first year or so, in [265] fact, almost a year and a half. I drew \$50 a month. I never drew any more. That is all I got from the committee direct, to my knowledge. (A receipt was produced) (The document referred to was passed to the witness.) I got that.

As to Exhibit 103. February 1, 1934: "As I have

(Testimony of W. J. Morgan.)

the best engineer I can find to make a report on the mines, and he will have it complete by Monday." I think at that time we only knew one engineer in the deal, and that was Mr. Chaney. Later on there was an engineer that used to do some work for the company by the name of Reed Sampson, but up to that time Sampson was brought in I think Chaney was the only engineer. Mr. Chaney set himself up as a mining engineer.

As to circular letters that were sent out to the stockholders—I signed a lot of them. Some of them, I didn't sign. [266]

BYRON E. ROWE

a witness for the Government, testified as follows:

Direct Examination

I am a miner, and have been for forty years. During most of that time I lived around Sonora, Tuolumne County. I live at the present time at Jamestown. That is four miles from Sonora, Tuolumne County. My hometown is about 50 miles from the McKisson Mine. It is over in Calaveras County.

The first time I went to the McKisson property was with Reed Sampson in 1936, the latter part of 1936. We spent several hours there. I took one

(Testimony of Byron E. Rowe.)

sample from the stope in the lower tunnel level. This map that I have in front of me was prepared in the latter part of '37 or the first of '38. That is when I sampled the property. This is the tracing that the original map was made on, and this other one is a print off of that.

(The map referred to was placed on the blackboard.)

This down here is the title. It is the McKisson Mine, West Point Mine District, Calaveras County, California, Brunton Survey, September 30, 1937, scale 1 inch equals 40 feet, by C. Martin, Sampling directed by Byron E. Rowe. I went over there. I wasn't there all of the time. Martin did the work. He did the surveying and the sampling under my direction. That map was made as a result of that sampling and of the survey. A Brunton survey is made by a little hand Brunton, Brunton transit, which most every engineer [267] probably owns one of them.

Up here is a plan of the two tunnels, looking down from the sky to the earth (indicating). That is the top tunnel. The mill tunnel up above. This is the ditch tunnel, the lower one. This line running here (indicating) is a crosscut, and these figures along here (indicating) indicate the results of sampling, the values obtained from assays made from cut samples. All the information contained from it is written out here opposite each line. This is

(Testimony of Byron E. Rowe.)

where the level is superimposed. That is the position of them looking from the top down. This here (indicating), they are spread apart so the sampling could be put down, but here is where they are superimposed. This colored section is the section through the mountain. This is superimposed here (indicating). That is the position of the level looking down (indicating). Here is where the levels are spread apart to show the assays. This lower diagram down below is where you would superimpose these two, one on the other; so you get a true picture, looking right straight through the earth. And this is turned up so you get a plane or section cut. You split the hill in two along the vein. Pointing to the mill tunnel, the upper tunnel, this section indicated there is a stope. You are going west, north being the top of the map. The first aperture entering the mill tunnel is a stope which is an elevation above the mill tunnel. It is a mined out opening. Along here (indicating) you come to another one of those [268] called a stope, and you come along and you come to a smaller one over here. Up to the extreme left of this map, the westerly end, there is an old-time tunnel from the early days. That is coming from the west and going east. That is a stope at the end of it. On the lower tunnel the ditch tunnel starts the portal out to the edge of the map, and this little dip here (indicating) is the ditch, where the flume carries the water through there. Coming in from east to west in this

(Testimony of Byron E. Rowe.)

lower tunnel we come a distance of approximately 480 feet. From the portal of the lower ditch tunnel coming in eight inches is 820 feet. In the lower end is a short stope there. That is 400 feet into the point that you have here, and you have what you call a raise that goes from the lower ditch tunnel. That goes clear through to the upper or mill tunnel. Proceeding on, we come in here—480 feet. Then we have another little stope. This area (indicating) is a stope tunnel. It is empty. I find $13\frac{1}{2}$ inches there. The length of it, not from the entrance, but the length of it here is about four inches, 160 feet. That is the last stope. There is a winze here started. That is about the middle of this last stope, fifteen inches. A winze is a small shaft starting at the bottom of a level and going down. When I was there that was about six feet deep, maybe eight feet. The stopes are in a sort of yellow color, and the probable ore is colored in purple. These are sky blue. These violets or purples down below represents possible commercial ore. That is the pink. [269]

(The map referred to was marked "Government's Exhibit No. 108" for identification.)

I was not given any compensation for that first visit over there. I just visited to look the mine over. He wanted my opinion as to the mining methods. I visited the property several times.

(Testimony of Byron E. Rowe.)

In May 1937 I went over with Mr. Wikoff and Mr. Shaw, and possibly Mr. Tyler. At that time we saw a mill with five stamps running. The mill is out here at the portal tunnel (indicating). Possibly the lower floor maybe 30 feet below the ditch a five-stamp mill was operating.

After we went to the Mountain King Mine they wanted me to go ahead as consulting engineer. We just talked it over and I agreed that I would go ahead and act in that capacity. Mr. Wikoff, the president, gave me a letter authorizing me to go ahead and act in that capacity. But I never acted, for the mere reason that I had all I could do where I was at to attend to my own work. I went up there several times, accommodation trips, for Mr. Shaw, when he would call me up and wanted me to go up and check up and see what was going on up there.

Mr. Norcop: This letter, Exhibit 21, is on the Consolidated Mines of California stationery and is one of those seven, your Honor, that are set out in the indictment. There are seven different copies with seven different addresses. It is dated July 1, 1937. I am reading from that letter, the [270] third paragraph, which reads as follows:

“Mr. Byron E. Rowe, who has successfully operated mines in this section for over 30 years, has been made ‘Assistant to the President’ and put in full charge of directing policy and methods of mining and development.”

(Testimony of Byron E. Rowe.)

(By the Witness) I did consent to act as assistant to the president at that time. He gave me a letter authorizing me to go ahead and act. I haven't got it now. I think I returned it back to Mr. Wikoff. I never acted under it.

As to a letter on the stationery of W. J. Shaw & Company, dated December 20, 1937, and addressed to Byron E. Rowe, care of the Mountain King Mine, Copperopolis, Calaveras County, California, I received that letter through the United States mails about that date, or shortly afterwards.

(The document referred to was received in evidence and marked "Government's Exhibit No. 109.")

Mr. Norcop:

"December 20, 1937.

"Mr. Byron E. Rowe,

"C/o Mountain King Mine,

"Copperopolis, Calaveras County, California.

"Dear Byron:

"Jack McCarty arrived this morning, and as a result of the conversation I had with you last [271] night, I came to the office this morning for the first time in many months feeling that the McKisson Mine will now be in good hands since you have definitely decided to take entire charge. I want you to know, Byron, how we appreciate this, and if you can't make a go

(Testimony of Byron E. Rowe.)

of it, I do not think anyone else can. Ty is supposed to leave tonight and will carry out your instructions. Colman O'Shea will be asked to report to the office immediately, and you will be advised when he leaves. I realize that you are more or less handicapped, but I also realize that you act quickly, and the McKisson Mine should be going in a very short time. If you think you should close down over Christmas that is your business. In fact you are going to be backed up in this mill the same as you have in the Mountain King. I suggest that you keep track of your mileage and all expenses in connection with the McKisson, so that we can take care of that separately, and the consideration to you for the supervision that you give it will be discussed upon my return which I expect will be this week.

“You may remember the mill man Danielson, who first gave us information indirectly that developed in the present investigation regarding O'Shea. I understand he is capable, and certainly must be [272] honest from the information he gave out.

“Jack is leaving here tomorrow night, and maybe I will come with him, and the payroll will be delivered to you by him Wednesday, as I do not want to take any chances of the mail being delayed during the holidays. Pur-

(Testimony of Byron E. Rowe.)

suant to the understanding with the California Liquidating Company, check was mailed Saturday for \$250. Within the next few days I will have some information regarding the sale of the California Standard Mill. The Diesel Mechanic and his son whom I spoke to you about are available to come on request.

“Again assuring you of full cooperation, and with best wishes, I remain

“Sincerely yours,

“Jack (signed)

“W. J. Shaw

“WJS/G”

And this stationery has a rubber stamp on it giving the Santa Monica address and telephone number, and is dated December 20, 1937.

(By the Witness) “Ty” referred to in the first paragraph was Tyler, and Colman O’Shea was the superintendent at the mine. The next to the last paragraph refers to the Mountain King. Then he goes back here about the Diesel; that refers again back to the McKisson. Danielson was an employee [273] of the Consolidated Mines of California, at the McKisson property.

The map is dated December 30, 1937. That was about the time the sampling was going on. The lower tunnel looked better to me than the upper works did, and that is why I recommended that they

(Testimony of Byron E. Rowe.)

spend \$5,000 there and go ahead and sink a winze at the rate of \$5,000 a month, because I thought the lower tunnel showed more evidence of more than the upper did. I wrote a letter on that of which one of those is a copy of my findings there as to what I wanted to do.

I don't know if it was a good property. You had to sink to find out. It warranted a little further money spent on it to find out the answer one way or the other, either that or abandon it; that was my recommendation. If it has the earmarks that it might win out, it would be better to spend a few more dollars to save it. The condition there warranted spending \$5,000. That is as far as I would go on it, five or six thousand dollars. I wrote the letter, and that was all; that was my recommendation.

(The document referred to was received in evidence and marked "Government's Exhibit No. 110.")

Mr. Norcop:

"Mt. King Mine

"Copperopolis, California

"Jan. 18, 1938. [274]

"Mr. F. S. Tyler

"506 Bay Cities Bldg.

"Santa Monica, Calif.

"Dear Tye:

"Your letter under date of January 15 arrived yesterday. Jack Shaw delivered the check

(Testimony of Byron E. Rowe.)

for \$150.00 for trustee account. We are asking that you send a duplicate copy of all invoices to us—that is if you have no duplicate, you should have an exact copy typed of the invoice and sent to us. As you will notice, you receive invoices substantiating all amounts paid out from trustee account.

“There is nothing doing at McKisson. The watchman you put in is still in charge. I paid all the men off on sampling job, also the watchman for Dec. Mo. He has 15 days now due in Jan. Month. I will need \$1000.00 to start up on and figure it will take about \$5000.00 to prove the thing up with. The program will be to start with 7 men to sink a winze and extend a X-cut on the Ditch Adit. My conclusion after making a study of the situation is that the Ditch Adit has improved over the Mill Adit 100%, and indications are that a much stronger vein and better values are coming in with depth. There is no commercial [275] ore available in any of the development work done to date. However, I figure a development program can be carried on and enough ore will come from this work together with a small amount of ore which can be recovered from the old levels, to about make an even break while the development work is being carried on. That is, it will not take more than \$5,000.00 of new money to prove the mine up as a producer or failure. As

(Testimony of Byron E. Rowe.)

I stated, it will be necessary to have \$1000.00 to start work with. After that may need the \$4000.00 balance or may not call for any more money, but as you understand, no outstanding accounts are to be paid out of this estimate.

“I feel that if I am to have anything to do with the management, it is to be managed from this and not from the Santa Monica Office as the Mt. King is being handled.

“Chancellor is available for the McKisson at any time you get ready to move there. You had better mail Schoy’s check direct to him. The roads are in such shape at present that everyone has to walk down to the McKisson from the top of hill near the school house. Don’t make any McKisson checks out to me. Make them to Chancellor as trustee.” [276]

(By the Witness) Chancellor was the foreman of the Mountain King Mine. Davidson was the other man. Chancellor was the man I intended to put up there in charge of the McKisson Mine if we went ahead with the program. I turned over some funds to him and started him in. He made two or three trips there, but he never went to the Mountain King Mine. He only went there on one or two trips.

There was \$500 sent up there in response to this letter. I received \$810 all together. I have furnished an accounting of all that money. \$75 was paid to

(Testimony of Byron E. Rowe.)

me for sampling, then \$25 for some other expenses which is named there. Other than that the money was spent for the watchman, and there was a little to be done there. The property wasn't operated by me during that time.

(Examining document) This letter was received by me through the mails.

(The document referred to was received in evidence and marked "Government's Exhibit No. 111.")

Mr. Norcop: It is on the stationery of the company at Santa Monica, addressed to Byron E. Rowe, dated July 15, 1938:

"Dear Mr. Rowe:

"This will be your authority to take complete charge of the operations at the McKisson Mine, for the Consolidated Mines of California.

"Very truly yours, [277]

"Consolidated Mines of
California

"Frank S. Tyler (signed)

"Secretary-Treasurer."

(By the Witness) I took complete charge of the operations. That was for the sampling. That is when he sent up the \$500 to go ahead instead of the \$1,000. I wanted an authorization. I put two men on for three days, and I understood that they had compensation insurance and I checked up and found

(Testimony of Byron E. Rowe.)

out that they didn't, and then I laid the two men off. That was all there was to it. The rest were paid off for the watchman. The sum total of all the operations I did on the mine was two days. Repairing the engine, or starting to repair the engine.

As to this letter on the stationery of another company, addressed to Frank S. Tyler, it is signed by me. I sent it down with a check to balance the account for \$29.69, and some time later he returned the check with the letter. This is the letter that I wrote him.

I recognize Mr. Hughes sitting here in the courtroom. He visited the Mountain King Mine and also me in Jamestown. After he had been there, I had a conversation with Mr. Shaw pertaining to the McKisson Mine. I don't think anybody else was present. That is some time in the latter part of '39. It was several months after Mr. Hughes was up there. The only conversation was that he asked me if the S. E. C. boys had been around, and I said, "Yes." He said, "What did they [278] want to know?" I said, "They wanted to know what I had to do with the McKisson Mine, and I told them that I never had anything to do with it, only make a map of it and sample it, and was going to take charge of it and go ahead with it." Then he asked me about the map, and I said, "I gave them the map and they took it with them." And he

(Testimony of Byron E. Rowe.)

said, "Why, that is dynamite for them to get that map."

Cross Examination

That is one of his favorite expressions, dynamite. He says dynamite a lot.

(The map referred to was received in evidence and marked "Government's Exhibit No. 108.")

I have been a minor for 40 years. As to this letter of July 1, 1937, "Mr. Byron E. Rowe, who has successfully operated mines in this section for over 30 years," that is true on that date.

"—has been made assistant to the president." That was true.

"—and has been put in full charge of directing policy and methods of mining and development."

I agreed with Wikoff and Mr. Shaw; and Mr. Tyler was present. Mr. O'Shea was put in charge of operating the mine. I don't know when he came. I went to the mine when he wasn't there on December 17th, I think. I looked for him for two days. When I found him he was getting ready to eat. I think he had about 27 men on the payroll. Of course, they [279] weren't all working at the same time, but there was that many on the payroll. Mr. Tyler came up there and paid them off. Under the circumstances he was working under, he shouldn't have had but very few. I did not see those men on the property. I didn't go up there when he shut

(Testimony of Byron E. Rowe.)

down. Mr. Tyler went up with a man by the name of Mr. Bruner. I was not there when they wrote the checks to pay off everybody.

I think that map is correct. This stope up here, No. 1 on the east side—that tunnel, I think that is what they call the mill tunnel. There was an old tunnel that had been coming from the west. That is the top tunnel, and then the second tunnel down is the mill tunnel, and this is the lower tunnel, the lower tunnel is the ditch tunnel. The tunnels were all open at the time of the sampling. You could go any place.

I went through and took a few check samples; took one in here (indicating) and took one in here (indicating), and I think I took four or five check samples on Mr. Martin's work. This thing in here (indicating) is a sub-level; that is the level that runs between this level (indicating) and this one (indicating). That is a sub-level. That doesn't go out on to the open air, just in where the ore body was. I did not make any recommendations with regard to Mr. O'Shea. At the time I made that map and the time I made my sampling I was satisfied to make the recommendation to spend about \$6,000. I got \$500; that is all. The other \$310 was for [280] the sampling, but the \$500 was to start the operation.

Redirect Examination

My recommendations as to the continuing of work and spending of \$5,000 are the same as are in my

letter here. There was no ore above the level and the only place to prove it was below the level. There was no ore in sight then.

CHARLES M. HERON

a witness for the Government, testified as follows:

Direct Examination

I am a mining engineer. I have been so engaged thirty years. I graduated from the College of Mines at the University of California; spent five years in Mexico doing the general work around a mine that a young engineer is put through. I worked as an assayer, surveyor, geologist, mine sampler, cyanide foreman, smelting house foreman, underground foreman, and toward the end of that time I was sent out frequently to make mine examinations of properties that were offered to the company for purchase. I have been doing that type of work ever since more or less continuously. I have been a consulting engineer eight years. I have had experience in the mother lode country. My first mining job while I was still in college was at the Kennedy Mine, which is at Jackson, and I have been in the mother lode country very [281] frequently on mine examinations.

I made a visit to this McKisson Mine in the month of May of this year. May 12th was the day I

(Testimony of Charles M. Heron.)

arrived. I was there four days. On the first day, May 12th, I went through the workings that were open, rather outlined my ideas for making the examination. The first day I didn't take any samples. I returned the following day. On that day I found a man about a mile from the mine who went with me to do the labor of sampling. The first thing I did was to make a Brunton survey of the lower level to as far in as I could. I think I was given that map after I returned from that examination. I think I was given and had with me one of the maps which was made by Mr. Sampson. When I went into the mine to commence my sampling I had just the one man assisting me.

I am referring to the report which I submitted describing my examination, made after I returned, from notes that I took at the time I was inspecting it. 25 samples were taken in all at 10-foot intervals. As to my method of cutting a sample in a mine, I usually make parallel markings across the vein that I am sampling, and then instruct the man to cut samples to a uniform depth of about $\frac{3}{4}$ of an inch which makes, if that is absolutely followed, just as perfect a sample as you can get. So that I get the cross section of the vein at a thickness of about $\frac{3}{4}$ of an inch. I had the sampling done in that fashion on this occasion. I watched [282] all samples taken, caught the samples myself. This man did the labor. Then I had them assayed at

(Testimony of Charles M. Heron.)

Smith-Emery in Los Angeles. I got the results back.

(Examining report) The ditch tunnel is caved and blocked at a point 610 feet from the portal. The mill tunnel was caved and blocked at the point where you come into a cross-cut and then come to a stope—this stope (indicating)—and it was blocked and caved at that point, blocked completely full.

As to that upper level on the other side, that goes from the west to the east. I saw the portal of it. That was caved too. This point that I did proceed in the lower tunnel was beyond the raise that connects the ditch tunnel with the mill tunnel. I tried to go up that raise from the ditch tunnel to the mill tunnel. The ladder was quite rotten, it is affected by dry rot. There was apparently no ventilation through there. I tried to go up the ladder. I went up at least one length, which was 10 feet, and started up the next length, and the first rung came out in my hands. I could see that I wasn't going to make it, so I backed down. As I went down I think two rungs broke with me. I brought along one so you could see the condition of it.

After sampling and surveying I think I was there two and a half days. Then I returned to my office in Los Angeles. After I received the returns from the assays I prepared the report and I prepared a map. I have the ori- [283] ginal. The

(Testimony of Charles M. Heron.)

tracing is with it. That is the original tracing. The copy I am handing you is a true copy of the original tracing.

(The document referred to was received in evidence and marked "Government's Exhibit No. 112.")

Referring to my map, I am looking west. This is north. This is on a horizontal plane. I am looking at the sky from the center of the earth. The portal is here, and comes in through here to this point (indicating); it cuts the vein at this point. From there to here it was open. It was caved at this point (indicating); this cross hatching indicates timbering. At one place I did get a sample in there (indicating). I can find the corresponding place on this cross-section of Mr. Rowe's map. I drew this at a different scale from this so I could show a little more plainly the quartz. It is a very spotty, erratic sort of material. The quartz is quite narrow, not at all continuous, so I drew it a little larger to show the quartz in that. That corresponds to Mr. Rowe's map going into about that point (indicating).

I am referring to Exhibit No. 108. The beginning of the stope here on Mr. Rowe's map corresponds to what I have shown here as open stope (indicating). I was able to sample the top of that, which gave me a check on Mr. Rowe's sampling. The samples are taken at 10-foot intervals. I show my number, the width in inches, the ounces in gold,

(Testimony of Charles M. Heron.)

and the value at \$35 per ounce. No. 1 was the first sample I [284] took. It was six inches wide. I cut across six inches of quartz on either side, which was a granodiorite,—country rock. It is hard and barren. There is no particular point in taking any additional width there, although in mining you have to mine to 30 inches, so that six inches would be diluted by this additional 24 inches of barren ground.

The assay is .03 gold, which is \$1.05. I took that knowing that it would be low grade, but I simply wanted to show the values for the whole distance that was open.

On the other map there are one or two good assays shown on the floor of the drift and not on the roof, which is rather a bad system of sampling because you are very apt to salt yourself without intending to do so. But at that particular point I got \$8.75 about that same point. My sample there was 8 inches, which assayed .25 ounces of gold, giving a value of \$8.75. That is one of the best assays I got, incidentally. That is based on a ton. The best assay I got in all my samples was just beside the shaft. That was only three inches but it ran .35, which is \$11.33. per ton. It is practically worthless because you have to mine to a width of at least 30 inches—it dilutes that \$11 so that it isn't any good at all when it comes to mining. That is the highest assay I got. I got one here that was \$11.90, just at this one spot (indicating). That was 8 inches wide.

(Testimony of Charles M. Heron.)

It assayed .34, or \$11.90 per ton. The point, you are pointing to now on my diagram is a cross-cut. It was driven [285] out a ways from the vein apparently in search for another vein. That shows on Mr. Rowe's map. I examined that cross-cut. There was not any quartz in there. There was nothing of any interest in there at all. His map shows the same.

This diagram here opposite where the cross-cut starts is the raise, which is shown on Mr. Rowe's map as connecting with the lower tunnel, that is this connection from one level to another (indicating). I got to about that point when the run broke. I didn't see the place where the winze was commenced on Mr. Rowe's map. There is where the cave is, so that Mr. Rowe's winze would be out relatively in that position, about six inches to the left.

The only thing I was able to check was this: His samples along the top of the stope, and I can give you the comparative results of that sampling. The only opportunity for checking the Martin assay map is the group of assays taken just east of the raise on the ditch tunnel. Here Martin's map shows 14 samples over a length of 50 feet. These give a weighted average of \$2.34 for 8.8 inches in width; reduced to a stoping width of 30 inches, gives an average value of \$0.69 per ton. For a length of 70 feet, which includes the above

(Testimony of Charles M. Heron.)

50 feet, I took samples every 10 feet. These eight samples gave a weighted average of \$1.88 for 8.5 inches. Reduced to a 30-inch stoping width, this gives an assay of 53 cents per ton. That is 53 cents against 69 cents, which is a fairly good check.

[286]

I have had experience in operating mines and mills. I don't think I have ever operated that type of thing as I found in the McKisson mine. I made an estimate of what it would cost for mining per ton. I feel that it would be impossible, assuming that you got a continuous occurrence of ore of these narrow widths, I doubt if you could operate or produce for less than \$11 per ton. That \$11 is made up of the \$3.00 mining costs, \$2.25 milling costs, \$5.00 development costs, and 75 cents general expense. General expense would include overhead, marketing concentrates, taxes. The ore must run over \$11 to make a profit. That wouldn't include office expense away from the mine.

I was able to take Mr. Rowe's map and make an analysis from it. I was forced to do that. I considered it an excellent map and I drew my conclusions from what I saw there. I felt that there was absolutely no ore encountered. There may have been spots, and if there had been any continuity of that type of stuff, it might have been considered ore, but occurring as it did in scattered spots, it couldn't be considered ore. In other words, it was rather a

(Testimony of Charles M. Heron.)

poor prospect I would say. That would be my verdict on the whole McKisson property.

I did not find any samples containing free gold. I found some rather scattered sulphides,—iron sulphides, pyrites. I would not consider that property would justify the expenditure of \$80,000. (Objection was overruled) [287]

I looked through the mill. When I examined it, it was a 10 stamp mill. The track comes out from the ditch tunnel and goes over a bin with an iron grating, which is called a grizzly. It is dumped on there and the fines go through to the bin and the coarser stuff is broken with sledge hammers until it will go through.

I don't remember fully the plan of the mill. Grizzly and bin at the track level of the ditch tunnel. Then a six-inch crusher which crushes the ore to about $\frac{3}{4}$ of an inch maximum size, and goes on to a belt feeder, which there are two feeders. One is what is known as the Champion type feeder and the other is a belt feeder. One feeds through one set of five stamps and the other through the other. There are 10 stamps. Then amalgamation plates, tables, three Denver sub flotation cells.

I found concentrates left in the concentrate bins below the flotation cells. I took samples. I think there may have been a ton or a ton and a half of concentrates left there. Those concentrates ran 2.6 ounces of gold or \$91.70 at the present price of gold.

(Testimony of Charles M. Heron.)

There was not any material to cut from at the mill heads. I was able to arrive at a figure of how much tonnage material had been run through the mill. According to the data collected by the Securities and Exchange Commission, the total tonnage milled during the entire Consolidated operation was 3424 tons of ore. I got this data from data which the [288] Securities and Exchange Commission had. I believe they also showed me reports from the mint at San Francisco which have been furnished to them on this mine. I believe there is a letter from the mint which shows it.

Cross Examination

There were letters from the mint which gave us detail. I also saw a collection of settlement sheets which were authentic, I am sure. 3424 tons of ore which averaged \$10.48 per ton, according to the figures I have, was milled. I drew my conclusions as I always do. I have to get a certain amount of data.

I have shown only a portion of one tunnel unfortunately. I did not take samples from the rest of the tunnel. I couldn't get into it. I did not take any samples in the sub level (indicating). I did not go into the mill tunnel. That was blocked almost at the portal. The top tunnel was also blocked. The samples I took were from a portion of the ditch tunnel.

(Testimony of Charles M. Heron.)

As to how many feet of tunnel all told are there, those measurements were taken from Mr. Rowe's map, because I was unable to measure them myself. There is a total of 2535 feet, including the raise and the cross-cuts. I examined 370 feet. I discovered no free gold. I wouldn't say that there was no free gold, never has been.

I had the Sampson map. I have it with me. Mr. Sampson is an associate engineer, I think they call him, of the State Division of Mines. He is in that position now. I am doing [289] consulting work independently, not for the S. E. C., for the United States Attorney in this case. I am not a regular employee of the S. E. C. This is one of the things that I consulted in the matter.

There are some very interesting things about this map. There are indicated on the lower level—I would say 18 to 20 assays which were apparently taken in the floor of the drift. I think they were self-salted. I think they were without question, because most of the good assays shown on that map were from those. That is my interpretation of that map. I wouldn't figure that Mr. Sampson would do that. He was not relying on somebody else. I think Mr. Sampson's sampling was done overhead. I think those samples that were taken on the floor of the drift were taken by Mr. Gilbert. I studied a tabulation of Mr. Sampson's shown in one of Mr. Sampson's reports and he showed with an asterisk the samples which were taken by Gilbert.

(Testimony of Charles M. Heron.)

Of the tabulated list of 76 assays in Sampson's report, March 30, 1935, 21 were taken by L. D. Gilbert. The weighted average of the 76 samples is: Width, 13.8 inches; assays, 289; the weighted average of the 21 samples taken by Gilbert is: Width, 16 inches; assays, 6973. The weighted average of the 55 samples, excluding Gilbert, 13 inches of \$9.61, which reduced to a stoping width means about \$3.00 ore. That isn't of much account. I think that Mr. Gilbert was not a mining engineer. He wasn't an experienced man. [290]

Mr. Sampson's results were not so far different from ours. That is, "from ours" I refer to Mr. Rowe, whose results checked mine very carefully. I feel perfectly sure he salted himself unintentionally. A person relying on his judgment may have been misled, just as I think he was misled honestly in adopting the wrong method.

The thing that struck me when I first studied this map was in one part of that lower level he shows a \$600 assay for a width of 10 inches. Now around that there is almost nothing of any interest. It shows to me very plainly that that \$600 assay means absolutely nothing. He has simply salted himself. If those values were disseminated uniformly through that material, the other samples would show something. If he had gone back and checked that sample I feel sure he would have gotten nothing, or \$6.00 or \$7.00. This map is not encouraging to me. I have to interpret things from

(Testimony of Charles M. Heron.)

my past experience. At the present time in the state of science and mind it is possible to form an accurate opinion as to the quantity of ore by the sampling method. You can't determine by the ore the quantity that may be lying behind it. You have to judge by what you can see. I think that the data you get at any horizon, whether it is surface or 50 feet or a hundred feet, is all valuable to you in judging the peculiarities of your ore. I don't consider it ultimately a guess. People have been paying me to do that sort of work for 30 years. My judgment has not always proved accurate. I have made mis- [291] takes. I feel that my work is worth the effort or worth the money.

I have had to give an opinion on mines that I couldn't get into at all. I have gotten volumes of data and have had to draw my conclusions from other data than that prepared by myself. In the mill is an 800 cubic foot compressor. There is a gas engine for driving the compressor, a 25-horsepower V-type Fairbanks-Morse gas engine. There is just the one. I have bought those Fairbanks-Morse engines, but I don't remember offhand what they cost.

Then there was another engine for driving the compressor. Apparently that is what they had for running the mill, as far as I could see.

(Map offered)

(The document referred to was received in evidence and marked "Defendant's Exhibit G.")

(Testimony of Charles M. Heron.)

I examined reports by Mr. Chaney. I think Chaney's report was rather optimistic. It didn't give a favorable impression to me. I think it was supposed to be favorable but my interpretation of the data that he submitted wouldn't have led to the same conclusion.

To a man who was not a scientist, merely a business man who employed Chaney on the basis of his reputation as a mining engineer, and reads that report and doesn't have the critical outlook as a scientist has, I think it would give a fairly favorable impression that it is a good prospect for [292] a mine that warranted then some expenditure of money.

Redirect Examination

As to that total tonnage that went through the mill, according to the data furnished me that I considered reliable, was 3424 tons and was \$10.48 per ton mill heads. On the extraction it was \$8.38. The total gross value of the heads was \$35,883.52, with a total gross recovery of \$28,705.91.

(Questions by Juror Schumacher)

There comes a certain point when negative results seem to me should be fairly conclusive. At 2300 feet, or whatever the figure is, that is a lot of work not to have gotten anything more encouraging. There comes a point when it is logical and sensible to stop. To me there wasn't anything in that work

(Testimony of Charles M. Heron.)

that would lead me to expect to find a mine with any additional expenditure.

They have tried. There is considerable depth to that lower tunnel, not a great depth, but some. I had to draw my conclusions from what is on this map, which I feel is quite accurate.

(Government rests subject to putting on one witness.)

Documents made up by Mr. Jacobson from Black Book are offered.)

(The document referred to was received in evidence and marked "Government's Exhibit No. 71.")

(Copy of Porteous Agreement offered) [293]

(The document referred to was received in evidence and marked "Government's Exhibit No. 106.")

(The following proceedings were had outside the presence of the jury:)

The Court: All right. Proceed.

Mr. Montgomery: I desire to move to dismiss the indictment on the ground that no scheme or artifice has been shown.

Taking Count No. 1, I make a separate motion to dismiss Count No. 1, which deals with Garfield Voget, on the ground that it is barred by the statute of limitations. The certificate that was issued to Voget was No. 681 on March 28, 1936, and 691 and 696, showing 600 shares and 140 shares. One of

(Testimony of Charles M. Heron.)

those certificates was on March 24, 1936. They are not within the three-year period.

Then I make a separate motion to dismiss Count No. 2 on the same grounds, the statute of limitations, for certificate No. 362 for 1,000 shares having been issued on November 1, 1935.

I make a separate motion as to Count No. 3, John W. and John Wesley Cline, certificate issued November 4, 1935, the statute of limitations having run.

Likewise Count No. 4, C. E. Seegar—there is no testi- [294] mony introduced at all as to Seegar, as I recall it.

Mr. Norcop: You stipulated that the letter had been received by her, and we proved that it was mailed.

Mr. Montgomery: There is no testimony of any representations having been made as to her.

Moreover, certificate No. 308 for 654 shares was issued on October 3, 1935, and the statute of limitations is run.

A further motion as to Count No. 5, William and Julia A. Schumacher of Eugene, Oregon, on the same ground, that the statute of limitations has run. Certificate No. 684 was issued on March 17, 1936.

As to Count No. 6, I move to dismiss with reference to Augustina and Lillian B. Gardner on the ground that the statute of limitations has run, the date being March 23, 1936, certificate No. 688.

A similar motion as to Count No. 7, Mrs. Grace

(Testimony of Charles M. Heron.)

Hayes; the statute of limitations has run. The latest date there is April 26, 1936, certificate No. 709. Moreover, Mrs. Grace Hayes shows to have had her stock issue approved by the Corporation Commissioner in the issuance of the stock under Permit No. 3.

As to Count No. 8, I move to dismiss with regard to Patrick F. Murphy on the ground that the statute of limitations has run, February 19, 1936, certificate 597 for 21 shares was issued. Moreover, on the further ground that the matter was passed upon by the Corporation Commissioner [295] authorizing the issuance to Murphy.

With respect to Marie M. D. Craig, the latest dates there are 2-15-36 and 2-1-36. Her stock was also authorized by the Corporation Commissioner in Permit No. 3, and I move to dismiss as being barred by the statute of limitations.

The 10th count, as to Mr. and Mrs. F. E. Dodson, the date there is February 15, 1936, for certificate 635, and this was authorized by the Corporation Commissioner, and I move to dismiss on the ground that the statute of limitations has run.

Count No. 11, as to Alberta E. Stearns, the two dates there are July 29, 1935, certificate 156 for 175 shares, and February 1, 1935, 390 shares, and February 15, 1936, 175 shares, and some shares were authorized by the Corporation Commissioner. I haven't the data on that. I move to dismiss that as barred by the statute of limitations.

(Testimony of Charles M. Heron.)

Then we have Mr. James Cruz. I think the motion perhaps should be reserved as to Cruz. He has not testified as yet. However, I might make it at this time on the ground that it is barred by the statute of limitations. The certificate was 699 for 500 shares issued April 13, 1936, and this was one of the matters that the Corporation Commissioner passed upon.

As to Margaret Gaud, Count No. 13, the last date there is February 15, 1936, certificate No. 546. The Corporation [296] Commissioner authorized issuance of stock to her, and I move to dismiss on the ground that the statute of limitations has run.

The 14th count is under a different statute. However, certificate No. 732 was issued on December 14, 1936, and I move to dismiss this count as barred by the statute of limitations, and on the further ground that no registration certificate was required for the sale or exchange of this particular cement stock for the mining stock, so I put that on two grounds.

As to Count No. 15, the certificate was issued on the 13th day of May 1937 here as to 30 shares and, as I understand, the statute of limitations is three years. This would come within the three-year period. I move to dismiss on the ground that, first, no fraud has been shown. The Corporation Commissioner authorized the issuance of 123 shares on July 29, 1935, and then another certificate was issued later for another 30 shares, as was explained in the evidence. I move to dismiss on the ground that it is

(Testimony of Charles M. Heron.)

not required to be registered under the law—I mean, no registration certificate is required.

The Court: What is the basis for that? Was it personally owned stock?

Mr. Montgomery: Personally owned stock, and it comes within the exception also as to the selling within the state by a resident of the state. [297]

The Court: Well, it is the use of the mails. It doesn't have to be——

Mr. Montgomery (Interrupting): But the law itself has an exception in there.

The Court: What is that?

Mr. Montgomery: The law itself has an exception there.

Mr. Montgomery: Mr. Tyler, in exchanging his stock and obtaining this in exchange, was not acting as an issuer for an underwriting as a party that is required to file a certificate—I mean, to register it.

Mr. Montgomery: May I just, for the purpose of the record, include this Count No. 16, which is another one of those three certificates issued without filing a registration.

The Court: Yes.

Mr. Montgomery: I make the same motion as to that.

The Court: All right.

Mr. Montgomery: Of course, that was issued within the statute of limitations, but on the other grounds I will make that motion.

(Testimony of Charles M. Heron.)

The Court: All right.

Mr. Norcop: I have read your memorandum on 14, 15 and 16. I am pretty well satisfied with those. The only doubt there is in my mind is the one I have indicated.

The Court: The motion to dismiss will be denied as to [298] all of the counts as to which the motion was made.

No exception was taken to this ruling at the time, nor was it renewed at the end of the entire testimony, or at any other subsequent time during the trial.

No motion to strike any portion of the testimony, as to which a ruling was made, was made by the defendant at the conclusion of the Government's testimony, or at any subsequent time during the trial.

EDNA SHAW

a witness for the defendant, testified as follows:

Direct Examination

William Jackson Shaw was my husband. We are divorced. I obtained my final decree last April. I haven't lived with Mr. Shaw since the summer of 1939.

I owned some stock in the Monolith. I don't recall how much I owned. I owned some preferred

(Testimony of Edna Shaw.)

stock and some common. I don't know how much of either though.

I turned the stock over to Mr. Shaw to advance to the Consolidated Mines, to the McKisson Mine, and I got stock in the Mine.

The stock ledger shows on February 15th, certificate 661 for 2,828 and that was afterwards cancelled and certificate 678 for 2,828 was issued. That is the amount of stock that I obtained in the mines.

Mr. Gilbert wrote a letter to Mr. Shaw telling him that he had this very valuable property and he wanted him to see it, and Mr. Shaw didn't pay much attention to it, but the letter stayed with me and I persuaded him to go up and look at it. So Mr. and Mrs. Tyler and Mr. Morgan and myself went up to look at the property. I believe it was just at Christmas time in 1933. I saw Mr. McKiver and Mr. Gilbert up there who showed me over the mine. [299]

They painted quite a glowing picture of it and not only that we cut some samples ourselves from places of course that they told us to cut the samples, and we took them to San Francisco and we had them assayed and the samples ran \$76, which was very, very high, and we were quite excited about it, so we went back from San Francisco to the mine to make sure that we wouldn't lose it.

I nearly always made the trips to the mines with Mr. Shaw, because Mr. Shaw was in very poor health. One whole winter Mr. Shaw was on the stretcher unable to even sit up. People came

(Testimony of Edna Shaw.)

to the house to see him. Most of the conferences were at the house, because most of the time he was unable to go to the office.

Mr. Chaney, the engineer, came to the house, as did Mr. Reed Sampson, many times. Mr. Gilbert and his wife were up and house guests at our house.

I always went in the mine right along with Mr. Shaw and sometimes when he didn't go, even I went in with Mr. Gilbert and Mr. Sampson. Mr. Gilbert showed me places where the gold was more evident than others. There was one pocket that ran a thousand dollars, and he pointed to that, and there was one small place that ran \$2700. That was in the main tunnel and not so very far in. I don't know just how far in. I figure the main tunnel is where they went in. The main tunnel is the tunnel where they did most of the work. There was a tunnel down by the ditch, that is what I [300] referred to as the main tunnel. We often picked up free gold. I had a large box of samples of free gold that I picked up off of the dump myself.

As to discussions with Mr. Chaney and Mr. Shaw and Mr. Sampson and Mr. Shaw and Mr. Gilbert and Mr. Shaw, I sat in on most of the conferences. They always painted very glowing pictures of the mine. I talked to Mr. McKiver about it many times. The picture, or rather the light with respect to the gold mine never did begin to darken. No one ever told us that it wasn't good mine. No one who ever

(Testimony of Edna Shaw.)

worked in the mine ever said it wasn't a good mine. Mr. Rowe even said that he thought the mine should make money and he thought it was all right. I asked him this morning and he said he still thought the mine was good and still thought it could make money.

They closed down because the man who was the superintendent who was running the mine was Holman O'Shea and I went up with Mr. Shaw on one trip and we found that they had 26 or 27 men on the payroll and they were doing a quarter of a ton a day and we thought something must surely be wrong. So I went up with Mr. Shaw and we found there was very few men there and the ones that were there were drunk, and Mr. O'Shea could not be found, and it was common knowledge that Mr. O'Shea was never sober.

Reed Sampson and Mr. Shaw and myself went up to Mr. O'Shea before that time as to why they were not making money [301] at the mine and we had heard the reports of high grading up there and we asked Mr. O'Shea about it and he said, yes, he knew there was high grading up there, but he thought from now on he could keep it down to a minimum and everything would be fine and the mine would be paying real soon.

After the mine was closed down we attempted to make investigations as to its condition so as to see what could be done about it. We took an engineer with us named Mr. Beachum, and he went

(Testimony of Edna Shaw.)

in the mine and looked through and said that the stopes were all caved in and it would be impossible for him to give us an opinion at that time.

That was after the mine had closed down for some time. I couldn't say just when. It was in 1938 some time.

I know something about Mr. Shaw's expenditures with respect to the mine. Mr. Shaw was very careless about his money or keeping track of it. He often paid engineers, he paid labor, he paid very many, many bills that he never kept track of that never could have been on the books because Mr. Jacobson, he knew that he had spent the money, but it was never turned in to them. I often quarreled with Mr. Shaw about doing that. He would pass it off. He is highly nervous and he just does things on the spur of the moment and there isn't anything you can do about it.

Cross Examination

As to the Monolith stock which I owned and converted into Consolidated Mines, that was stock turned over to me by [302] Mr. Shaw. I had previously done things for Mr. Shaw and he turned this stock and also moneys over to me. It wasn't money that I had of my own, but I could have used it if I wanted to.

I acquired that stock in my name. I believe it was in 1933. That was after the Monolith stockholders protective committee was started.

(Testimony of Edna Shaw.)

After we folks had looked at the mines on the first inspection trip we cut some samples ourselves, where they told us to cut them. We didn't know at that time that they could tell you right where to cut the samples and they would be good samples, but we thought that the whole thing would be that way.

We took samples from the Grand Prize Mine, and we also took some samples from the McKisson Mine. I wouldn't have been able to identify after I got those assays what part of the McKisson Mine I had taken my samples from. I would know now not to cut where they told me to.

When I say "free gold" I mean pieces of rock with gold in it, that is, some rock the gold is in in the sulphites and you can't see the gold, and some rock has gold in, and that is free gold. I didn't mean little nuggets. I meant pieces of gold in the rock. I learned from practice up there how to pan for gold myself. [303]

W. J. SHAW

a witness in his own behalf, testified as follows:

Direct Examination

I am the defendant in this case. As to the Stockholders Monolith Committee, the reorganization took place in 1932, but there was another committee organized in '31. I had nothing to do with the organi-

(Testimony of W. J. Shaw.)

zation of that committee. In 1931 that was organized by E. S. Harding, a substantial stockholder, and his relatives who were stockholders, and a few other stockholders of the Monolith Portland Cement Company and the Monolith Portland Midwest Company.

Mr. Morgan was not in that group, but I was called in by the Harding group around the fall of 1931 for the purpose of assisting them in making an investigation of the books and records of the two cement companies, and then it was agreed that a reorganization of that old committee should take place. They felt that I had a moral obligation, and I did, too.

I was the underwriter of the original Monolith issue. I organized that company and underwrote the issue of one million dollars and a half under the name of W. J. Shaw & Company, of which I was the sole owner of that organization.

Mr. Harding had contacted a Mr. W. J. Gasco who was in the financial department of the Monolith Companies, and he arranged a meeting with me with Mr. Gasco, whom I also knew very well, and Mr. Gasco was in possession of an original assignment from Coy Burnett who was president of the organization, or vice-president of the Monolith Portland Cement Com- [304] pany. Where he, Fred Balen, who was the original president, had sold to Coy Burnett the control of the Monolith Portland

(Testimony of W. J. Shaw.)

Cement Company for a consideration of \$500,000 payable on the same date and practically the same amount that Shaw & Company were to pay to the corporation for treasury stock on the basis of so much a month. The latter ran up to a hundred thousand dollars a month that I agreed to furnish the corporation under this underwriting agreement. And it showed that when that was made around 1922 at the time or on the same day or a few days after that I had made my underwriting agreement with the corporation, and it was treasury stock of the Monolith Companies that was being used to pay off, to buy out Fred A. Balen, the control of those two companies.

Then he also had some photostatic copies of some private operations, private books of Coy Burnett, of which it showed in excess of \$6,000 or \$7,000 at that time.

Then we called a reorganization of the committee, and Mr. Harding was to be the chairman. Mr. La Grange was to be the other member, and W. J. Gasco should come in and be the other member. Then I met Mr. Morgan on about March 1932 and he wanted to come into the committee, so he came over and we finally decided that Mr. Morgan should be the chairman and Mr. Harding should be the secretary. So Mr. Morgan became the chairman of the Monolith Committee.

These members were in entire charge of the committee, [305] and on my deal with them was that I

(Testimony of W. J. Shaw.)

would work 60 days as an investigator to get all this data together, to employ people and auditors, free of charge.

I worked 60 days, but at the end of 60 days I found out that it didn't appear that anyone was capable of handling the affairs of the committee. There were some letters that were sent out by Mr. Morgan that had Mr. Hatfield and I. A. Haight and Mr. Silverberg.

I employed attorneys at that time. The first thing I did before I became connected with the committee, I went up to see George J. Hatfield, who was then U. S. Attorney of the Northern District of California. We made a deal with him to represent us. And then we made a deal to have Milton Silverberg to represent us down here, and I believe I put up that first fee of \$1500 out of my pocket.

Later we employed Thomas and Moore as certified public accountants here to start an audit of the books and records, and the committee had no funds outside of what I had advanced them.

I advanced them all the funds. Nobody put up any money but me. Up to that time it was probably a couple or three thousand dollars, but I guaranteed the auditors' bill to make an audit in behalf of Messrs. Silverberg and Morgan. After they worked for four or five or six weeks, the officers kicked them out and then we had to go in and employ counsel to go to court to have the auditors

(Testimony of W. J. Shaw.)

authorized [306] to proceed with the work, and Judge Emmett Wilson, after two or three months' fight, ordered the audit of the books made and appointed his own auditors, Lybrand, Ross Bros. & Montgomery. Then I had to go to them and guarantee their bill because the committee had no funds. That bill ran over \$10,000.

We sent out a letter, Mr. Morgan did, and I helped him draft that letter. The attorneys went over it, Mr. Hatfield, Mr. Silverberg, and it was thought that we would secure sufficient funds to prosecute this action by sending out a letter and asking them to contribute 50 cents a share for that purpose, but the letter didn't bring enough in to pay the postage.

Mr. Morgan employed a man by the name of A. R. Griffin, who had had a great deal of experience in raising money for stockholders, and he was employed as a sales manager, and then employed other men under him to go out personally and see the stockholders.

Mr. A. R. Griffin employed a number of solicitors, maybe 40 or 50. There was a great turnover. They were unable to make their expenses there at first.

Mr. Griffin raised about some \$20,000 or \$22,000, but the expense at the time when that amount of money was raised and we were in debt probably \$35,000 or \$40,000, which is practically all of the money I guaranteed personally, then I took the lead. [307]

(Testimony of W. J. Shaw.)

I started out and got ahold of some of the large shareholders that owned 4,000 shares and I closed them personally. Robert Pitcairn had 4100 shares. I collected \$2,000 from him and, by the way, I charged the committee no commission. The commissions were running 40 and 50 per cent to these salesmen, but all the money that I collected, which was the largest volume of the big ones, I never charged this committee one dollar of commissions.

I procured some of the stock to be deposited with the committee. It was finally agreed through Mr. Morgan, which was approved as a great idea by the attorneys, the letters in the file there corroborate that statement, that we should have the stock on deposit.

It was for the purpose of having the vote and right to represent them in stockholders' meetings and to represent them in legal matters, and also to keep Mr. Burnett from buying up all this cheap stock at 15 and 20 cents a share for the Midwest, 50 cents a share.

It was 15 cents a share in 1932 when the depositary agreement was made on the Midwest, and the common occasionally you do sell a hundred shares from 50 to 75, and occasionally you might get rid of a hundred or 200 shares of preferred if you found a buyer up to as high as \$1.25, but no market. You had to go to some broker's firm where they had salesmen and they would go out and resell them.

(Testimony of W. J. Shaw.)

I got around 50 percent, or 10 percent of the out-[308] standing stock deposited. Ten or 15 percent of the total outstanding Monolith, both companies.

I did not control the power of these stockholders to release their stock from the depository. I had no authority to have that stock released, but I finally was appointed executive secretary, because the bank kept denying me information when I would go there to the bank, and that was about the only way that I used the power of executive secretary. That was cancelled, however, in a few months after I was appointed. And then Mr. Morgan would be out of the city and Mr. La Grange would be out of the city and I was negotiating with additional attorneys, and I had that authority, but I never used it in any way outside of asking for the release of the stock in the bank.

The depository agreement was finally prepared by Haight and Tripett and Syverston, and Milton Silverberg, Hatfield, all the attorneys had something to do with it.

(Stockholders Protective Agreement Offered)

(The document referred to was received in evidence and marked "Defendant's Exhibit H.")

After we had got the court's auditors in there proceeding with the investigation, I had a meeting with Raymond Haight, of the Haight and Tripett firm at that time, who was representing another

(Testimony of W. J. Shaw.)

group of substantial stockholders in San Diego on this same supposed litigation, and he was about ready to file a complaint, but I got Haight and Tripett and Silverberg and Hatfield to work together, [309] and I think I *have* Ray Haight a \$3,000 check for a fee. I believe that came out of my personal funds. I don't know. I think it did.

So they proceeded to fight action in behalf of the corporation based upon the audit of the court, which showed that there were some \$2,000,000 taken by Coy Burnett illegally. I did all of the investigating on that. They testified in court they couldn't have won the lawsuit without me. I worked from 10 to 18 hours a day for a year. I finally got possession of all of the executive reports, the secret set of books kept by Mr. Burnett, photostatic copies of all of the minutes of the Monolith Company, a photostatic copy of all of the minutes of the Midwest Company—in fact, so to speak, I got the works,—and presented them to the attorneys to try this lawsuit, and it resulted in a judgment in the amount that you have heard before. The sum of \$225,000 was ultimately recovered. The judgment was \$820,000, but payable in kind.

It was settled in Judge Shinn's court with an offer that he could pay \$820,000 cash or he could buy up the 75,000 shares of the common stock, which it was shown that he took illegally, for \$1.50 a share and pay the balance in cash.

(Testimony of W. J. Shaw.)

That settlement, of course, I objected to and had a little run-in with Haight and Trippet—we didn't speak for a few weeks—and I sent out a notice to all the stock- [310] holders—I did—addressed to Haight and Trippet not to accept this settlement.

HOMER J. ARNOLD

a witness for the Defendant, testified as follows:

Direct Examination

I testified yesterday afternoon with respect to certificate No. 732 for 250 shares made out to myself and wife as joint tenants.

Mr. Shaw had told me about it, the first time I heard of it, although I did see Mr. Shaw quite regularly. The first I had heard of it was when Mr. Morgan got my name, evidently from the committee list, and called about this transfer that some of them were making. But I didn't talk with him any further.

Then the next time I saw Mr. Shaw I spoke to him about it. He said he was keeping me in mind, but he was waiting until things got a little further along before he said anything to me about it.

Mr. Morgan called me on the telephone. The time I discussed this with Mr. Shaw was some weeks or a few months prior to the month of December 1936. I think that was when I got the stock.

(Testimony of Homer J. Arnold.)

Mrs. Arnold was present at that conversation, outside of Mr. Shaw and myself.

At different times different things were said. It wasn't [311] any one conversation, but it was about the general prospects of the mine.

He said that it wasn't a big mine, but what ore there was was running pretty high grade, around, as I remember it, \$18; that if they could get a mill of about 25 tons on there it ought, in time, to turn out a reasonable profit. He did not tell me who else was in the deal.

I have known Mr. Shaw since 1924. He has been a patient of mine through that time, and besides that I have considered him a very good friend, and he has given me quite a little business advice from time to time.

I got cash for the sale of my Monolith,—\$420. Then \$80 was added to that for medical services. So that I put \$500 in that proposition.

Mr. Shaw only told me about the deal, if I would invest it would have a very good chance of turning out quite a reasonable profit, and at any time that I wasn't satisfied, why, he would give me my money back. I never asked for my money back. I was never dissatisfied with his part of it.

I treated Mr. Shaw. I practice osteopathic work. I am blind.

At the time that Mr. Hughes and his partner—I have forgotten his name—first came out to talk to me about the—I think it was two years ago this

(Testimony of Homer J. Arnold.)

summer when they first came out—they wanted a statement at that time as to what our dealings had been, and then at a later time they [312] came to me again. That is when they asked for the stock certificate, and I hesitated in handing it out—I don't know, I never cared to just turn loose on any certificate that I had, even if it was to a Government representative—and so I asked Mr. Shaw in the meantime—I told him that they were asking me these questions and wanted my certificate, and was it all right. And he said, “By all means. Go ahead and give it to them and give every cooperation and everything that they want to know. Don't hold back anything.”

I let them have the certificate then, and I gave them a statement as to the best of my recollection. They took it and wrote it up and had me sign it.

W. J. SHAW

a witness in his own behalf, further testified as follows:

Direct Examination

(Cont'd)

When I was conducting my campaign with respect to the monolith Stockholders Committee, it was agreed that I should not be known until after I got all of the evidence, and as soon as I felt that

(Testimony of W. J. Shaw.)

I had secured sufficient evidence to go ahead with the trial of the case, then I came out and moved out from my little room, investigating room, into the office of the committee and took charge of the Los Angeles office. We had a San Francisco office, too, where Mr. Morgan and Mr. Harding had charge. We made all of our reports to Mr. Morgan [313] our daily reports of collections and evidence, and so forth and so on, to the home office.

There was other contact that I had with the stockholders after the proposed settlement was had other than this letter of mine. I called a meeting of the shareholders in this district to make a protest against the settlement, and they passed a resolution—The meeting was held at 704 South Spring Street, in the fall of '33. There were present at that meeting Mr. Morgan and Mr. La Grange, who was on the committee, Mr. Alexander, who was secretary of the committee, who had succeeded Mr. Morgan then, and Mr. Pitcairn, Dr. Cobb, and quite a number of others who were substantial stockholders, and Raymond Haight came down and Arthur Syvertson, of Haight, Trippet & Syvertson.

We proceeded with the meeting, and Mr. Haight and Mr. Syvertson thought that we should accept the offer, but I protested against it for two reasons: First, that I didn't think it was a fair settlement to the stockholders and, second, Haight and Trippet refused to bring a separate action for the

(Testimony of W. J. Shaw.)

return of the 50 cents a share which the stockholders had advanced.

They held that there was no law, that the court had no authority, and that I would be more or less simple to try to secure the return of those funds. It busted up in quite an argument. We were not speaking for a few weeks.

Then I employed Jerry Giesler on behalf of the committee [314] and Earl Daniels and Meyer Willner and also secured outside counsel, advice from Edward K. Brown, who found a law that the court—

The action was filed and we recovered the 50 cents a share back for the shareholders, and at my suggestion, to keep the funds away from Mr. Morgan, I suggested to the court that Edward Cassidy, who was with Lybrand, Ross Bros. & Montgomery, be appointed as trustee to return that money direct to the shareholders. That was done. \$65,000 was returned to the shareholders. It represented 85 percent because the trustee's fees came out of the 100 percent.

After the stockholders had won the lawsuit,—The judgment was rendered in July '33, and then I had agreed to follow my doctor's advice and get a place on the beach and keep quiet for a few weeks.

Then in around the fall of '33 I started out to look for some business to go into, and there were at least a dozen different promising propositions.

Mr. Tyler came from the city of Detroit in the

(Testimony of W. J. Shaw.)

fall, I believe, of '33. I sent him some money to come here, he and his family. He was out of work. I heard that he was an outstanding engineer, but at that time I didn't connect mining engineer with a civil engineer. He had supervised, I was told, some big projects.

As to how I happen to come into contact or learn about the McKisson and Porteous claims, we had a letter from Mr. [315] Gilbert, whom I have known favorably for a number of years, telling us that he had, I believe, two or three mining properties and they were, the way he spoke of them, he had really found something.

After I had received the letter—in a week or 10 days later after I received the letter—Mrs. Shaw picked up the letter and said, "This is a coming business, this gold mining business, and you have Mr. Tyler living here with his family with us, and he isn't doing anything." Mr. Tyler is a brother-in-law. Mr. Tyler and I married sisters. He was living with us as our houseguest.

Mr. and Mrs. Tyler and Mrs. Shaw and Mr. Morgan and myself, went up and met Mr. Gilbert and a Mr. McKiver at Jackson, California. We went over the Grand Prize Mine. We went down a shaft about 37 feet. We took some samples, spent about a day or a day and a half there with Mr. Gilbert. We proceeded to go to San Francisco.

The Grand Prize is the Porteous claim. And we went to the McKisson Mine and then proceeded to

(Testimony of W. J. Shaw.)

San Francisco and we were there a day and I said, or Mr. Tyler I believe said, "Why don't you have this ore assayed?"

And I said, "Well, we will take them down to Smith-Emery."

I said, "I am acquainted with them and they are reliable and see if there is anything to it."

And another day or two we went down there and got the [316] samples and were on our way back to Los Angeles and the assayer, I said, "What do they assay?"

And he said, "Well, around \$70 or \$72 a ton."

I said, "Does that mean anything?"

He said, "Why, that means a lot. That is a very healthy ore."

I called up Mr. Morgan over in Oakland and told him about it. He had had a great deal of mining experience, or at least I thought so at that time, and he said, "If you have got any ore that will run over \$20, you have got a good paying mine."

So we changed our plans and instead of going to Los Angeles we hurried back to Jackson to meet Mr. McKiver and Mr. Gilbert. And we couldn't get down there quick enough, because we heard someone else was going to take over this property. And the deal was closed on all three properties before we left there.

The deal was closed in the name of Frank S. Tyler, for the reason that Mr. Tyler was looking

(Testimony of W. J. Shaw.)

for a business. He had a man very wealthy in Detroit that was looking for mines, and he told me before we had gone up to look at the mines that if they would stand up with an engineer's report that he could get all the money he needed from this friend in Detroit. And they were turned over without any consideration from me, without any promise of help financially until this Detroit man could get here, because I had practically decided to stay [317] out of business for a while longer.

There was no misunderstanding about giving me any share of the net profits. We didn't discuss that at all. He did not at that time owe me very much money. I think I had rented this home of Mrs. Franklin's. I gave her a check for \$300.00 for a year's rent, and I gave that to him and just other funds over a period of five or six months as he needed it. That ran along until I think the following year around June or July and Mr. Tyler had owed me considerable money in another deal that I had given him a sixth interest in. That was the Malibu pleasure fishing deal out in Malibu where there was quite an investment. I got all that money for that and got all of the boats and gave Mr. Tyler a sixth interest in that. I think that was in '33 or '34.

The fishing deal turned out very successful for the other people. I came back from San Francisco one day where I went to buy another barge, but

(Testimony of W. J. Shaw.)

when I got back, why, the two men that I had backed said that they had decided I had better see their attorney on this partnership agreement, and as a result Call and Murphy waited some time later until they sold out and sued them for \$80,000 as my part of the interest which I had figured as I had of my part coming.

As to when I made any arrangement with Mr. Tyler with respect to the mine, I think that was in the early summer of 1935. As to whether I made an arrangement with him before the letter that he signed of July 1, 1935, I don't [318] recall any agreement that we had.

After Mr. Tyler informed Mr. Morgan and myself and the others in the office that he was unable to get this man to come here to finance him, it was decided—I was in the meeting when it was decided—that we would choose about six or seven of the largest stockholders of this committee and get them to put up 8,000 shares of the preferred stock and 20,000 worth of cash for a 60 per cent interest, and I made a list of those six or seven or eight people. Mr. Pitcairn owned 2,000 shares of Monolith preferred. Mr. Wikoff owned about 1250 or 600 shares. Two of his associates owned about four or five hundred shares apiece. Mr. Morgan and Mrs. Morgan owned 640 shares of preferred. Mr. Marcus, who was a member of the committee—Mrs. Shaw had some 500 shares of preferred. Anyhow, it totaled up about 12 or 15 thousand shares of preferred stock.

(Testimony of W. J. Shaw.)

Mr. Morgan signed up first. Mr. Wikoff, who was a member of the committee, chairman of the Monolith protective agreement committee who succeeded Mr. Morgan when he resigned, and also a member of the executive committee, turned over his stock and cash and Mr. Marcus did the same. Mr. Pitcairn came down with his stock, but it didn't go through because he told his wife about it and she seemed to be the boss, so he couldn't complete his deal on 2,000 shares.

Mr. Morgan said, "Well, I will have to talk to my wife, and if I am going to be made the president of this corpora- [319] tion, why, I know she will go through." But that kept on and kept on, and we never did get Mr. Morgan's stock or his cash. It finally wound up that he said I owed him \$25,000 and he wouldn't sign the settlement of the committee or do anything until I paid him \$25,000.

This agreement is dated the 6th day of February, 1934. I had no interest in the deal at that time. I did not employ the attorneys to draw that agreement. I know who did draw it. It was Guy Graves of Call and Murphy.

I don't recall paying them anything for that. However, I did pay them later on a thousand dollars toward their fee of the Consolidated Mines of California; that is a year later, a year and a half.

(Announced that the date of the Partnership Agreement was February 6, 1934.)

(Testimony of W. J. Shaw.)

The date of the profit agreement that Mr. Tyler gave me was July, 1935.

(Announced that the date of the Profit Agreement was July 1, 1935.)

(As to the Corporation):

Mr. Montgomery: The certificate here shows that it was incorporated under the laws of the state on the 19th day of September 1934 and then on the 3rd day of May 1935 there was filed an amendment changing the amount of capital stock. [320]

(By the Witness):

The incorporation was filed and 450,000 shares were authorized to be issued by the Corporation Commissioner. 150,000 shares was to be free stock, that is, stock issued to the owners in this partnership agreement. That partnership agreement with the names, the subscribers' names on it, was filed with the Corporation Commissioner and the stock finally was ordered issued direct to them and the 300,000 shares was put into escrow at the California Bank under the name of Frank S. Tyler as trustee for the owners of the 150,000 shares, but under the escrow agreement their dividends could be paid on the 300,000 shares and it could not be released until the owners of the 150,000 shares got their money back, or further orders from the Corporation Commissioner. That 300,000 shares was the voting control of the corporation. That left 550,000 shares in the treasury, which has not been touched or any

(Testimony of W. J. Shaw.)

part been sold or any application to have any of it sold.

The attorneys that took care of that transaction are George J. Hatfield and Call and Murphy. Mr. Guy Graves is of the firm of Call and Murphy. He and Mr. Hatfield did the legal work in connection with the filing of the application. Mr. Hatfield and Mr. Graves got the permit also, and they also incorporated the company. In fact, they handled all of the business and no one, not even Mr. Tyler or Mr. Morgan, or anyone, had anything to do with the cor- [321] poration other than go through the attorneys. All advice all through the whole operations was all approved all by the lawyers. This agreement, and every act of any matter of any kind, I always got legal advice from the attorney.

Mr. Tyler got legal advice from the same lawyers. At the time Mr. Tyler signed up to give me 80 per cent,—I don't know how much money I had advanced to him then, because I never looked at the books in my life and I don't know anything about figures. I never looked over books in my life that I can remember. I don't understand them. I am very bad at figures. I always had good auditors, C.P.S.'s. I got Louis R. Jacobson. He came to me very highly recommended after I had checked his references for about two months. These transactions with respect to the mines in the exchange of the stock, and in taking care of the bookkeeping and that sort of thing, took place at the Banks-Huntley

(Testimony of W. J. Shaw.)

Building in Los Angeles. That was the office of W. J. Shaw and Company, Consolidated Mines, and the Monolith Stockholders Committee. I believe the Monolith Stockholders Committee name was on the door, but I am not sure.

I discussed with some of the stockholders the matter of exchanging their stock for Monolith stock for the mining company stock. In fact, I made I think two or three sales myself.

I put Mrs. Shaw's stock into the mining deal for her. She always had quite a lot of Midwest, but by the way, we [322] were not taking Midwest stock at that time, because it looked like I was going to go out and have to do the same job over for the Midwest of investigating and lawsuits that I did for the Monolith, and as long as we were representing the Midwest on the committee, we were not going to accept the Midwest because we were going to, supposed to go ahead and represent in another lawsuit.

With regard to the Midwest claims, we brought the largest suit after long litigation and after I had advanced them \$18,500 going over the same route again, and wound up that it was the longest lawsuit complaint that was ever filed in California. It took 300,000 legal sheets of paper to print that complaint. It was a duplication for their money back.

In other words, if you had 2,000 stockholders or shareholders, each one of them was suing for their

(Testimony of W. J. Shaw.)

money back and you had to duplicate each one of the complaints.

George A. Hatfield, Haight, Trippet & Syvertson brought that suit. The result was a settlement after they had been demurred out of court for about six or seven different times. We were advised that we had better make any kind of a settlement that we could get, that is, that was the advice of the lawyers. And I made a deal where the defendants, Monolith Portland Midwest Company, Coy Burnett and others, would buy at least 50,000 shares of Midwest stock at a price of \$2.50 a share. Prior to that time I think the records [323] will show that it was offered for 50 cents a share with no sales, no buyers. And they agreed to pay back \$45,000 that we had collected from the shareholders of the Midwest Company and the attorneys' fees and part of what they owed me under a contract, and I believe all of the costs of the litigation.

I have no records when that settlement was. They were all taken away from me, but what I figure from the attorneys, I will have to guess on that. I believe it was '36.

I believe that letter, Judge, refers to the Monolith settlement and not the Midwest.

As to the Monolith settlement, and a \$12,000 payment to be made to me, that was for the investigation and work that I had done in behalf of the trial of the case. The court did not take into consideration some \$11,000 I had paid out for photostatic

(Testimony of W. J. Shaw.)

copies and the other work, and they did not take into consideration the agreement I had with the committee, because the court held that was separate.

That was an agreement whereby I was to get so much money for my services as chief investigator and for all the moneys that I had advanced to the committee, but the settlement of the Midwest, I believe, was in '36. I can get the definite date from my papers.

I did not offer to pay Mr. Morgan at any time any portion of this \$12,000. He claimed half of everything I got. I never made any agreement with him to pay him half of everything I got. I had no agreement with Mr. Morgan. However, [324] I did pay him in excess of, from what he got from the committee and what I gave him ran in excess of \$12,000, probably \$15,000.

(File of Pacific National Bank of San Francisco offered.)

(The document referred to was received in evidence and marked "Government's Exhibit No. 1.")

(Testimony of James Kruse.)

JAMES KRUSE

a witness for the Government, testified as follows:

Direct Examination

I was a stockholder in the Monolith Portland Cement Company, and also a stockholder in the Monolith Midwest,— the Wyoming company. I owned in the California company, 54 preferred and 50 common, and in the Midwest 270.

(Examining document) March 9, 1934, is right. Previous to that date I had a conversation with Mr. Alexander, at my home at 1127 Laguna, in San Francisco. There was another man there, but I don't know his name. He was a little bit taller and a little bit fuller than him. In fact, I didn't take much notice of him, because I didn't like the idea.

They put a proposition up to me about his mine. It was a very good investment, he said, and it was a very good location, and it would be a cheap operation. In fact, if they only got \$10 a ton they would make a good profit. But the [325] things looked very good and they expected that the mine would be in operation in three months, and she would turn out at least 30 percent dividends. He didn't say what period that would cover.

Alexander was doing the talking. I did not make any transaction.

Following that I went over to Oakland to see Mr. Morgan in the Oakland Hotel. I did see Mr. Morgan. Mr. Morgan and I had a conversation. He

(Testimony of James Kruse.)

thought it was a very good proposition and the gold was up now and it would be a good idea to have a try at it and he was for it, and I said, "If you are for it, I will go with you."

Then he introduced me to two men, Alexander and another fellow. I had met Mr. Alexander previous to seeing Mr. Morgan at the hotel, but then I seen him again in the hotel there. He was there with another man, a heavy-set fellow, the same man that I had seen him with at my house. No one else was present besides we three, Alexander, this other man, and I.

We had a talk about it and put a proposition up to me: It was a good thing, and so, of course, I took Mr. Morgan's advice and I agreed that I would turn over the stock.

This document is a receipt that was given to me by Mr. Alexander the next day when they came over and got the stock in San Francisco where I lived. Alexander and the other man, they came and I gave him the 54 shares of Monolith preferred, [326] and \$87.50 in cash. That was March 9th.

(The document referred to was received in evidence and marked as "Government's Exhibit No. 113.")

Thereafter I received several letters through the United States mails concerning this mining enterprise.

Some months later on at my city at the William

(Testimony of James Kruse.)

Taylor Hotel, Tyler called me up with respect to this proposition. We took a ride in a car. It must have been in '34, shortly after the first transaction. He told me all about the mine and one thing and another. It was just an ordinary conversation, that it was a good investment and it proved better than they expected, and so forth.

He told—the other time he told me that there was, I forget now how many tons of ore was blocked out there, and the other time he told me they had sent to the smelter and shown a \$38 a ton.

I had several conversations with Mr. Tyler. He came down there frequently. He was not always alone. He had a man with him very often. There was a heavy-set fellow with him, kind of a Jewish fellow. It was a Mr. Wohlberg. He wanted to try and get any stocks that I had.

Mr. Shaw called me up on the telephone at my home, in 1127 Laguna Street. Mr. Shaw was at the William Taylor Hotel. He wanted to see me, to come up and see him. I had not met him before. He recollected meeting me and was very anxious to see me on some dealings I had with him before. I went [327] alone to the William Taylor Hotel and saw Mr. Shaw in his room. I told him about the dealings we had before with A. Mister & Son, so he said he recognized that and he had lost so much money during the crash, and he knowed that I lost money in the crash, and he wanted to help me that I get my money back again. And he was talking about the

(Testimony of James Kruse.)

mine, how good a proposition it was, and to take all I could get. He always told me it was not expensive to operate the mine; it would be a profit if they had \$10 a ton, but it ran up to \$20 and more. He did not mention the expenses that the company would have to pay to operate the mine.

The first time that I visited Mr. Shaw in the William Taylor Hotel in his room I took 250 shares for \$500. That was at the time I received a certificate for 41 shares. Mr. Shaw gave me the 4100 shares, on account of my losses in the A. Mister & Son.

As to this letter on the stationery of Consolidated Mines of California, dated March 26, 1936, I received this letter through the mails about March 26th.

(The document referred to was received in evidence and marked "Government's Exhibit No. 114.")

Mr. Norcop: It is signed by W. J. Shaw and dictated "WJS:S." Reading:

"I have your favor of March 3rd and in accordance with your request and our understanding am enclosing certificate for 41 shares [328] of stock of the Consolidated Mines of California. Mr. Frank S. Tyler is in the north at the present time and is expected to be in San Francisco within the next few days at which time he will call you and give you the latest developments on our mine."

(Testimony of James Kruse.)

(By the Witness:)

Mr. Tyler called at my home shortly after I received this letter. He came up alone. No one was there besides he and I. We talked about the usual thing, they had been down to the mine and it looked very promising, in fact better than they expected, and that they were working on the mill, that they were working full-time, and that there was a lot of ore blocked out, and so forth.

I do not recollect whether or not I made another investment in the mining proposition with Mr. Tyler at that time. I got the shares and afterwards had to send them back again, because they had to alter them in some way. I sent them all back in. Then I got them back again.

Later on, Tyler came to me with a car and got me, brought me down to the St. Francis Hotel. Shaw had just come from the mine. Mr. Shaw was up in his room in the hotel. Mr. Tyler and I went up there to Mr. Shaw's room. We started the usual conversation. Mr. Tyler remained just for a little while.

They just talked about the mine, and afterwards he wanted [329] Shaw to go down and get some cigars. No, Shaw told Tyler to go down to get some cigars, and Mr. Tyler left the room.

Mr. Shaw said he is just finishing up now. There was only about 500 shares left, and he told me I better take them because it was a good investment.

(Testimony of James Kruse.)

He was going to reduce them to me for \$800, from a thousand. I refused to take them. I couldn't take them for that. And afterwards he let me have them for \$600 because I had lost so much money in the Pacific Stores and A. Mister & Son. I was paying \$500 for the 600 shares.

I received this letter on the stationery of W. J. Shaw & Company and dated March 8, 1937, and that is the envelope. My total investment in Consolidated Mines finally amounted to 1,500 shares.

In Midwest Company I got share for share back. I paid \$10 a share and I got \$2.00, and I pay \$2.00 a share for them. The 54 shares I got \$10 a share. They paid me \$10 a share. I didn't figure out how much cash I invested altogether.

(Document Exhibited)

Mr. Shaw cut it out. I didn't see what was in it. He had it on the table there and he cut this piece out and the other piece I signed, but he had cut a piece out there,—a duplicate of this here. The paper was in this condition when Mr. Shaw gave it to me. He gave it to me on or about the date that is shown up here. That was 250 shares for \$500 [330] cash.

(The document referred to was received in evidence and marked as "Government's Exhibit No. 115.")

This transaction is the \$500 cash. The other one was the stock.

(Testimony of James Kruse.)

As to this letter dated January 23, 1936, on the stationery of the Consolidated Mines of California, I received that letter through the United States mails.

(The document referred to was received in evidence and marked as "Government's Exhibit No. 116.")

As to this two-page letter on the same stationery, dated January 7, 1935, I received that letter through the mails on or about or shortly after the date it bears.

(The document referred to was received in evidence and marked as "Government's Exhibit No. 117.")

As to a letter on the stationery of the Monolith Stockholders Committee, Los Angeles, California, dated May 12, 1934, I received that through the mails. It has the signature of W. J. Morgan, and with reference to this letter on the Consolidated Mines' stationery, dated July 12, 1935, which also has the W. J. Morgan signature, I received that letter, and with reference to this letter on the Consolidated stationery, dated August 8, 1935, and having Frank S. Tyler's signature, I received that letter.

(The document referred to was received in evidence and marked as "Government's Exhibit No. 118.") [331]

(Testimony of James Kruse.)

As to the letter dated September 17, 1935, addressed to the stockholders, I received that.

(The document referred to was received in evidence and marked as "Government's Exhibit No. 119.")

As to this processed letter dated November 8, 1935, Frank S. Tyler, Consolidated Mines of California, I received that one.

(The document referred to was received in evidence and marked as "Government's Exhibit No. 120.")

This one of November 16, 1935, on the Consolidated stationery, I received that letter.

(The document referred to was received in evidence and marked as "Government's Exhibit No. 121.")

And this circular letter on the Consolidated stationery, dated February 21, 1936, and this letter dated June 12, 1936, addressed to me at 1127 Laguna Street, San Francisco, signed by Frank S. Tyler, with the initial "S.", I received that.

(The document referred to was received in evidence and marked as "Government's Exhibit No. 122.")

This one of July 1, 1937, I received that through the mails.

And this letter of September 1, 1937, I received that letter through the mails.

(Testimony of James Kruse.)

(The document referred to was received in evidence and marked as "Government's Exhibit No. 123.") [332]

In making my various investments that I made, I did not exactly rely on the statements that Mr. Alexander made to me in his conversations concerning this mining venture. I relied on Mr. Morgan. After I talked with Mr. Morgan, then I was willing to invest.

Following that I relied upon my conversations with Mr. Shaw when I made that additional investment of \$500. I believed what he said to me was correct.

Cross Examination

At my first talk with Mr. Tyler, I didn't like the idea, so I didn't make any investment at that time. Either the next day or the day after I went down to Oakland to see Morgan. He interested me and then—I said, "If you are for it, I will go with you."

The first number of shares that I bought was 439. I talked to Alexander about that. I got the stock quite a long ways afterwards.

I went up to the mine in August, after I had bought everything. I didn't go up there before. Gilbert was there.

Those shares, what I got, I had to send them all back again. They had to alter something on it. I did not know about the matter being presented to the Corporation Commissioner of California. When

(Testimony of James Kruse.)

I was up at the mine I went in the bottom tunnel and I went up the stoop. I went up the ladder. It hadn't dry-rotted at that time. There was that second cut in there that didn't go outdoors at all but just [333] went along inside, halfway between the upper and lower tunnels just a little ways. I went into that.

I did not go into the top tunnel. The mill was working. It was right close to the entrance, just a little bit off the entrance of the lower tunnel. They had five stamps there. They were operating at the time.

As to how many tons they told me they were putting through, I forgot. They told me about it, but I have forgotten.

After I went up there I don't believe I bought any more stock. I think it was in August in 1936.

I talked to Mr. Shaw at the St. Francis Hotel. I haven't got the date when it was. He was coming from the mine, him and his wife, and he sent Tyler for me. Tyler came in the machine and brought me down to the hotel. I talked with him. That was the time that he told Tyler to go down and get some cigars, because he knew that I didn't smoke cigarettes or drink, I suppose, so he wanted to treat me to a cigar.

As to Exhibit No. 15, I didn't see him write it. I got the letter from Shaw. That was the date that he talked to me. It was on a Sunday. I don't know what that is that is cut out there. Very likely that

(Testimony of James Kruse.)

was Mr. Tyler's address. I don't know. I didn't see it. He just cut it out and he handed me that and I signed the other one.

(Examining map) I haven't seen it. He told me the length of the tunnel there. I couldn't say whether it was 70 foot or not. What you are running your pencil through is [334] the lower tunnel. Where I went up the ladder is a little bit further down. There was quite a bit done there. I didn't go in the upper tunnel. He was busy. I didn't go up in the top. Not on the top of the hill at all.

I am not so sure about the date but, as far as I can remember, it was on the 17th of August 1936. It couldn't have been '35. I went up on the stage. I happened to go up because I just wanted to; I was interested; I wanted to see what it was, because I had my doubts about it. It was not raining when I went up there. I went up to Stockter and then I took another stage to Jackson, then I took a ride with some truck down there further down, and another fellow took me down there.

I didn't write to Mr. Shaw. I wrote one letter about the stocks, when they were going to send the stocks. I didn't write to Mr. Shaw personally. I didn't write to him after I had been up to the mine.

(Examining document) I have no recollection of that. Gilbert was managing the mine at that time. No one was above him at all. There was another fellow there—I forget his name now. I think he was some kind of an assistant there. He was working in

(Testimony of James Kruse.)

the lower tunnel there. I don't know exactly where he was working, but he seemed to be some second boss there. I spoke to him first. His name was not Lytle. [335]

Mr. Norcop:

“March 8, 1937

Mr. James Kruse
1127 Laguna Street
San Francisco, California

Dear Mr. Kruse:

“My reason for not answering your letter promptly is that I have been expecting to come to San Francisco every day for some time, and I thought it best to have a personal talk with you, to go over the matter, so that you might understand the whole situation.

I will be in San Francisco very soon now, and will give you a call upon my arrival.

With kindest regards,

Very truly yours,

W. J. SHAW (signed)

WJS:S”

This is on the stationery of W. J. Shaw & Company, Investments, with the Los Angeles address.

Redirect Examination

After receiving that letter Mr. Shaw came down to the house, down to my place, at 1127 Laguna Street. He was with Tyler.

(Testimony of James Kruse.)

I can't think about this here, whether it was in the St. [336] Francis Hotel—it must have been in the St. Francis Hotel. That must have been the trip when Tyler took me down to the St. Francis Hotel. I only seen him three times—it must have been at the time when I invested the \$600 for 500 shares. That is the time.

Mr. Montgomery: I will call the witness' attention to the fact that his certificate for 500 shares was on April 15, 1936.

(By the Witness:) I don't recall that.

P. G. McKENRY

a witness for the Defendant, testified as follows:

Direct Examination

I am a mining engineer and auditor. I was engaged in the Lybrand, Ross Bros. & Montgomery auditing firm. I was one of the auditors that was on this Monolith proposition. I went to the School of Mines at Stanford University, and graduated in '26.

I was engineer for the Mary Anne Mining Company out of Oraville in Colusa County, and for the S. C. P. Corporation up in Garden Valley out of Auburn. And I was interested in an operation at the Old Tumco, T-u-m-c-o, Mine at Oglesby, California, 15 minutes from Yuma, Arizona. And I also went up to work on the Consolidated Mines of Cali-

(Testimony of P. G. McKenry.)

ifornia, the McKisson Mine, as I knew it, in 1934, I think, on June 1st, and was there until September 1, 1934. I was there three months. [337] This was after the auditing had been completed by the Monolith Committee with regard to the first suit.

At the McKisson mine I was engineer in charge of development. I drove an extension of the tunnel that was in the lower section of the mine known as the ditch tunnel and about 650 feet in I drove a cross-cut of 125 feet, attempting to contact the vein known as the back vein on the property. I have looked at that map, U. S. Exhibit No. 108. The vein, the McKisson vein, is showing in the lower tunnel. That is where I did my work.

This is the cross-cut that is shown on U. S. Exhibit 112. I did not make the raise. In that ditch tunnel that I mined I found the vein very narrow and erratic, as far as values were concerned. There were times in there where the ore would come in and when it came in, it came in with a horse and we were always driving into the vein matter, and there were times where I would cut an assay out of the middle of the face just after blasting and the values would run all the way from a trace to \$20 or \$30. I kept no record at that time, because I was pushing the development work straight on through, attempting to block out ore. I did not find anything encouraging in the first five or six hundred feet. It was rather discouraging, but the further in we went, it seemed there was an indication

(Testimony of P. G. McKenry.)

in there that the vein might widen and there were certain places in there where I had to put timbers in to keep the vein matter in place. Those were in the lenses. [338]

The ore up in that particular little mine comes in lenses and it swells and squeezes. It will run along maybe for 12 or 15 feet with only a streak on the wall, and it might come out to 2 or 3 inches and it comes out and makes a little body of ore, and then it squeezes back again. That is what I consider a lense. It is a body of ore in the vein.

I believe it was somewhere in here (indicating). I went right on through here (indicating) to this point (indicating). I had them cut a station in there at that time and drive this cross-cut. I did not find any ore in the cross-cut, it was through the hanging wall, and it was granodiorite, blocking and very tough with no vein showing.

I expected, with an extension of 25 to 30 feet on that vein, to come into a vein known as the back vein of the property. I didn't expect any ore until I contacted the back vein.

I did not do any work on the mill tunnel. The mill tunnel was showing this stope when I went up there and it was my recommendation at that time that I would pull a rail from the cross-cut down here, inasmuch as they didn't want to go ahead with it against my wishes and put the rail up here and drive ahead, because the ore—I had been up there and prospected it, and this little stope had shown

(Testimony of P. G. McKenry.)

there, had been a little ore in it, although it had been stoped out, although it was only 4 inches, it had shown indications of coming into another body of ore, that is, another little [339] lense or shoot. Later on I understood that they did go into some ore up there, but I wasn't there at the time.

This here is known as the Pine Tree shoot, Pine Tree tunnel. They considered it at that time when I was up there in 1934 that there was an ore shoot coming down just about like this (indicating), and I believe that this probably was put in here as a bottom extension of this shoot.

This little green portion says "probable ore" with a question mark. If there were a shoot above there, I believe that whoever made this map would presume that that shoot would extend in this section.

In making my sampling I cut a channel sample across the face about four inches wide and about four inches deep. And the reason I took the samples that way is because I found that the values were so erratic in it in taking the samples that I had to take large samples to get an average.

With regard to cutting samples to a uniform depth of about three-fourths of an inch, I wouldn't consider that would make a good sample in this mine, because I don't think you would have enough volume of rock there to give you a good sample. The values are so erratic that the more volume you could get the better average you could get out of that. I know that in the past I cut some samples

(Testimony of P. G. McHenry.)

up there that ran 70 cents and five feet further it would probably go \$11 or \$12 and then back to a trace again. I was always trying to get enough volume in there so if there were any galena or anything like that showing [340] in the rock, we threw it out.

There was seepage of moisture through the walls of the tunnel. The mine has been making a little water. As to the effect of that seepage upon the ore in the top of the tunnel, if it was silver it would leach, but if it were gold, gold doesn't leach by the waters, but if the gold were contained in a sulphide or some other material, such as galena—if gold is around the galena, the water may have a tendency to leach the gold loose so it would drop to the bottom of the floor. If it did that, then you would have a concentration on the floor of the tunnel.

As to whether it would have anything to do with taking a sample four inches deep instead of three-fourths of an inch deep, it all depends on the type, how the gold or the sulphides were lying in the rock. If it were just penetrated, that is, all the way through, then you would probably get a better sample, if you cut deeper.

I last saw this mine in March of 1941. The ladder was pretty rotten. There was ventilation. It was just breezy at the portal of the tunnel. When you opened the door you could feel the breeze come out.

(Testimony of P. G. McKenry.)

I couldn't sample the mine right now. The mine is practically caved in. That is, from about 650 or 700 feet on into the mountain.

The upper level, also known as the mill tunnel, is caved in and is quite dangerous. I could make an accurate, scien- [341] tific sampling at the present time of that portion which is open, but it wouldn't give me an idea of the entire mine. I would go to the extensions there or depths where ore is found in larger quantities.

When I tested the mine myself I found some free gold. I found that the so-called iron pyrites or the sulphides up there carried value.

I also found that there is considerable galena in certain spots, and wherever the galena shows the vein matter becomes much higher in value.

I also found that the vein in various places carries arsenical pyrites. Even the water that comes out of there, the men don't drink it because of the arsenic in the water.

As to my knowledge of the mine during the years 1938, '39 and '40, I have made several trips in there and have spent considerable time, and the reason that I did that was to satisfy myself as to the value, if any, of the property. I didn't go down into the property and sample for myself again, although I had a copy of Mr. Sampson's map I intended to check his samples at a later date when the mine was reopened. I spent considerable time with Mr. Barnwell in Mokelumne Hill, who had an assay book with

(Testimony of P. G. McKenry.)

about 1500 assays. It seems that he was assayer employed by the company. He offered to give me a copy of the assays—he considered it a very good little property from the samples that he had run in his laboratory. [342]

It was my plan to re-open the property and verify Mr. Sampson's report, and also to find the likely spot in which I could go to work. With that in view I spent in the last year or so about \$1,000 or more.

(Map exhibited)

I have a copy like it.

With reference to the probable value of ore bodies on this mine, I would say that the map would be rather enthusiastic. I made an estimate of the tonnage of ore that has been milled from this mine since I first started. I did that last year when I was up on the property for myself. I don't know how much was milled—I wasn't on the property at any time during the time the mill was operating—I had taken what I considered the average width as I had known certain portions of it in the past, I figured how far the rise had gone up—most of the rise was up to 90 feet—I figured that if that had been on a foot and a half width, that they had mined and milled, and there would have been approximately 5600 tons. I have no way of knowing what had been milled.

This district is known as the Glencoe mining district and not the West Point mining district as this

(Testimony of P. G. McKenry.)

map shows, because West Point is across the Mokelumne River about eight or 10 miles distant.

In this particular locality adjoining this property on the east is a property known as the Blue Bill Mining Company. There is no mill on the property but there has [343] been considerable development work done there.

The south of this property about a quarter of a mile is a property known as the Good Hope, I understand \$375,000 has been taken out of it to a depth of 300 feet.

To the west of it is a property known as the Valentine Mining Company. It is owned by a group in San Francisco, and I don't think they have mined there since 1910 or somewhere along in there.

On top of the hill there are several little properties operating, and they are taking their ore to a custom mill located about seven miles from these various properties. One of them is known as the Mexican mine.

In my opinion, if properly managed, this property would make money, and that would depend on the type of ore bodies found by additional development work. In my opinion, it is probably of a character that would justify the expenditure of additional money,—development money.

It is hard to say how much I could make if I got into the mining. I would have to change the mill design considerable up there also.

(Examining document) This is where the ore

(Testimony of P. G. McKenry.)

comes in, and comes down through the grizzly here into this far bin, then into crushers. They have a six-inch jaw crusher there. And then it goes into a fine ore bin below—the fines, however, go right through—and from there there are two batteries of stamps of five each, ten stamps, and one of the feeders [344] up there is an automatic feeder and the other is a belt feeder.

There are two plates at the back of each battery stamp, or one plate back of each battery—two plates—and then from there it feeds into three Denver sub A flotation cells.

Then the settling tanks are over here and the tailings go off down the river.

It is an open circuit mill and the type of ore that has been going through there I think necessitates a change, if I had the property I would put in a ball mill classifier, a small ball mill classifier, put a sump out there so I could pump back and hold the values because the way the thing is designed, if the gold gets away from you, it goes down the side of the mountain and you never can recover your tails, and I believe that some values did get away because I ran some tests on some tails that ran \$53, according to Mr. Barnwell's assays.

The air compressor is an upright Sullivan, and is capable of throwing about 750 to 800 cubic feet. It is about seven feet tall.

There is one Buda Diesel, 90-horsepower, attached to—with the Marwood pulleys, B belt drive. That

(Testimony of P. G. McKenry.)

is a 90-horsepower Buda attached to the air compressor. The mill was run with a 25-horsepower horizontal Fairbanks-Morse semi-Diesel, and that Diesel is torn apart down at the bottom of the mill. The heads are off of the Buda also in the second [345] floor.

There are times where your values will come in at a lower depth or may be higher up in the mine. That is due somewhat to the way that the gold was distributed, of the weakness when the land was hot and the descending vapors came through in the secondary enrichment, they would find a weak point to ascend. There have been mines that the deeper you go, the more the values are.

I didn't give up because I had gone into the upper levels up there and found that it would warrant further development in the bottom, and when that wasn't done in accordance with the way that I thought it should have been, then I left the company.

Cross Examination

I graduated from Stanford in '26. I was working at accounting before I entered Stanford. I took a mining engineering course at Stanford.

After that I have been working most of the time as an accountant.

A horse coming into your vein means a disturbing element that breaks it up.

LOUIS R. JACOBSON

a witness for the defendant, testified as follows:

Direct Examination

As to United States Exhibit No. 97, Consolidated Mines of [346] California profit and loss statement of mill operations 1934 to 1938 as per record of Frank S. Tyler and records of Consolidated Mines of California.

In considering the heading here as profit and loss statement, I would say that it is not a reflection of the operations of the mine as a profit or loss.

There was included on this statement for the years '33, '34 and '35 losses aggregating \$45,000 which I say were incurred primarily in the development of the property under Frank S. Tyler's original agreement, and under no circumstances would it be included in the preparation of a profit and loss statement.

If the corporation had started off as of January 1, 1933, say, in those three years I would have included it as development expenses and capitalized it.

The year 1936, that would be a correct reflection of the operations of the property. There is nothing that should be charged to development for '36 because we did take a certain proportion of the operating expenses for '36—I think to the extent of \$7500—and capitalized it as development expenses.

In '37, however, there was no charge made to development account, everything being charged off to expense.

(Testimony of Louis R. Jacobson.)

This schedule, Exhibit 95, may not be considered as showing a profit or the profit and loss.

The heading of this statement says "Showing Net Profit [347] From Sales of the Monolith Stock, Consolidated Mines Stock, Sold for Cash and Cash Taken in in Tyler Agreement."

Under receipts for the year '36 it shows an item of \$8,050, Pledgor & Company Loans. There is no reflection on this statement that those receipts were obtained from any stock sold. There were considerable dealings between W. J. Shaw and Pledgor & Company, and he did make loans from them at various times. I couldn't construe this particular item as being a proper showing in the profit and loss statement.

As to Mr. Shaw's private deals, Under Monolith stock sold for '34 and '35 and '36, from this statement we can't determine what part of those sales would be represented by any of the considerations turned in on the Tyler original agreement or from the sale of Tyler's personally owned stock. It is an indication here on this statement which shows that there stock purchased outside of these mine deals in 1935 to the extent of \$8,301.41 for expenditures. Now, the sales thereof would be reflected under receipts, and my recollection of those various accounts is that there were some private deals entirely apart from the Consolidated, and the mere fact that there was a disbursement made for Mono-

(Testimony of Louis R. Jacobson.)

lith stock sold indicates that they were private deals.

I have in mind two such private deals. Mr. Pitcairn's stock. It is quite a block of Midwest or Monolith Portland Cement stock; and also Mr. H. U. Baker. I think he turned in some stock and made some private deals. There were a number [348] of private deals now and then.

If Tyler or Shaw bought any of that stock, it would be reflected under disbursements in the amount of \$8,301.41 in the sale thereof, would be reflected under receipts, and if we knew how much is received for that stock, as shown under receipts, we would know what profit was made on that particular deal or deals.

There are some other schedules in evidence that would indicate the profit made on the deal.

I would say United States Exhibit 96 is not a correct statement of the actual amount of moneys spent at the mining properties.

I would add to that, if we take into consideration the moneys that were received by the mine itself during the period from '36 to and including '37 upon the mint receipts, they should be properly added to that, because practically all disbursements were made. There was no balance left there in the bank account. So we presume that this money, plus the moneys that were received from any other sources, would have been expended for the account of the mine.

(Testimony of Louis R. Jacobson.)

There is about twenty-four or twenty-five thousand dollars they got from the operation of the mine itself. That would make in the way of expenditures on the mine \$106,000.

Mr. Shaw never examined the books. He did not direct any entries in the books.

During '35, '36, I can't say how many, but there are a [349] number of stockholders *number of stockholders* that came in to see Mr. Shaw. I recall one incident in '35 that I brought to his attention where Mr. Shaw checked on the salesmen as to the representations that they made. Mr. Shaw and I were alone and were conversing about it.

After I told him about the incident, he came out and talked to the salesman, or called the salesman in the room and I was present with the salesman at the time. I don't recollect who the salesman was. He worked under Charley Wohlberg.

That particular salesman was calling up a number of Midwest stockholders and using what I considered to be pretty strong tactics in persuading them to turn the stock in. I went and told Mr. Shaw about it. Mr. Shaw immediately went into the room that I was in, or we went in together in his room, and he told him he had to cease using those tactics.

With respect to office use and a stenographer, my recollection is that there was a fixed monthly charge against the corporation of \$150 per month, which included all expenditures. There was no charge ever

(Testimony of Louis R. Jacobson.)

made unless it could have been included in that \$150 for services I rendered to the corporation.

There are entries on the books indicating that engineers were paid by the Consolidated Mines.

The records in the black book would also indicate that payments were made directly either by W. J. Shaw or Tyler to Reed Sampson particularly. [350]

Tyler and Shaw did not charge their traveling expenses to the corporation, going to and from the mine.

As to legal advice obtained by Mr. Shaw and Mr. Tyler in regard to the permits, conversations were made with Mr. Guy Graves. I had a few with him with respect thereto, particularly in obtaining the third permit.

The question arose there at one time whether or not we were correct in our assumption.—I say “we”; I was in the discussion on it—in trying to sell Tyler’s stock over state lines, and we took that matter up with Mr. Oscar Trippet, although I am under the impression that Syverson was also in on the conversation—Syverson of the office of Haight, Trippet and Syverson—and we took their advice.

The third permit, of course, was issued to correct the second permit.

The matter was brought to the attention of Mr. Shaw and he requested that I take it up with Guy Graves, and Tyler was along with me at the time.

I took the position, after reading the second permit and also taking into consideration the partner-

(Testimony of Louis R. Jacobson.)

ship agreement, that I felt that the stock should have been issued as original stock directly to Tyler to the extent of his interest and to the individual members of the partnership agreement in accordance with their interest—no, I will change that.

The Corporation Department took exception to the manner in which the stock was issued. That was issued all to [351] Frank S. Tyler, and those individuals out of the original permit. They required that we recall that and issue one certificate directly to Frank S. Tyler for the whole 150,000 shares.

I took the matter up with Guy Graves at the time and told him that we could save an additional \$1800 in stamp tax because we would have to re-issue it from Frank S. Tyler's account to those individuals by asking the Corporation Department to give us a permit authorizing us that the original stock be issued 60,000 to Frank S. Tyler and 90,000 to the individuals, and we would save thereby \$1800.

On the exhibit attached to W. J. Shaw's income tax return for 1936 there is an item of \$2400 for revenue stamps attached to—"Stamps paid to be applied to Consolidated stock certificates. Income from sale therefrom reported under capital gains, line 10, in the amount of \$2400."

No charge was made against the corporation itself for revenue stamps for this purpose.

With respect to personally-owned stock, the only impression I had was with Mr. Syverson, as I recollect, as to whether we had the right to sell Tyler's

(Testimony of Louis R. Jacobson.)

stock over state lines, or whether or not we were evading the Securities and Exchange Act, which was quite new at that time.

Now I say Mr. Syverson—I am not certain whether it was Mr. Syverson or Mr. Trippet (they were both doing work for Mr. Shaw at the time, or had been doing work for him)—and [352] their opinion was that if they were not originally issued stock or if the corporation was selling the stock directly, or Tyler wasn't financing the property out of the receipts therefrom, that he could sell the stock just anywhere over state lines, use the mails, and so forth.

As to any advice from the regional director, I don't recollect—I have a faint recollection—I wouldn't say "faint recollection"; I know that he sent Charlie Wohlberg, or in company with Tyler, or whoever it may have been, sent Charlie Wohlberg to Wyoming or, I believe it was, Salt Lake, and he bumped up against the director there in regard to the sale of the stock. Now, whether Frank Tyler was with him or not, I don't recollect.

I do recollect a letter that Charlie Wohlberg brought in with him, or was mailed to the office, in respect to selling over state lines and not bumping up against the Securities and Exchange Act.

I have no recollection whether the regional directors of San Francisco and Los Angeles were inquired of. I know it was one state in particular that stands out clearly in my mind. There were transac-

(Testimony of Louis R. Jacobson.)

tions which were cancelled at the suggestion of the director in line with that letter that Charlie Wohlberg had.

I think they were returned to them, a considerable amount of Midwest or Monolith stock, which it was felt that we would get into difficulty if we attempted to make those sales. [353]

The company got the moneys to operate during '36, '37 and '38 from mint receipts and also from advances made by Frank S. Tyler and/or Shaw. Mr. Shaw advanced, according to the records, \$35,000 from February 1, 1936, up to the present time.

There was a discussion as to what was to become of these moneys that had been advanced by Mr. Shaw. There had been advanced at that time approximately \$19,000. Present at the discussion were Tyler, Morgan, Shaw and myself. The question was raised as to what would become or what would be done with the moneys that the corporation owed Tyler or Shaw. Mr. Shaw made the statement to us that so far as he is concerned we might just as well write it off entirely and see the corporation go along.

With respect to the work that was being done up at the mine, I received letters from Mr. O'Shea. I had known Mr. O'Shea prior to the time he was engaged by the Consolidated Mines, and at that time Frank S. Tyler was away from the office for a number of months. Mr. Shaw was away a good deal

(Testimony of Louis R. Jacobson.)

of the time, too. Mr. O'Shea was requested to write as frequently as he could—weekly if possible—giving the progress of the mine. He addressed those letters to me. He might just as well address it to the corporation.

I knew there was a shut-down for a while. It may have been after I had left the company and had been told about it. I am not sure. [354]

(Examining documents) I would say that is O'Shea's signature. Those are addressed to the company.

I saw at times my handwriting and I knew it was requesting that we pay certain bills, and I marked over the name "Paid" right across each one of those. Some of those are not marked and have not been paid. So I must have seen that letter.

I do not have any of the original letters that he wrote me.

I left the early part of '37. It might have been around May or June.

Mr. Montgomery: A letter of 7-21-37, and I might merely mention the particular item that I wanted there, "The average to date is \$14.75."

And the next one is 7-30-37, and he said, "With 15-stamp mill we could really make some money."

And the next one is 8-5-37: "Mill heads are running about \$17 and the mine is in good shape and there is no difficulty keeping the mill supplied with ore despite the trouble we had with the compressor."

(Testimony of Louis R. Jacobson.)

(The documents referred to were received in evidence and marked "Defendant's Exhibit I.")

Cross Examination

I was not in the courtroom when Mr. Hughes testified. As to Exhibit 97, I don't say it is not a correct reflection from the black book and the Consolidated Mines of [355] California. Nothing is missing on this schedule that should have been taken from the black book or the books of the corporation. The only statement that I made was that it is not a reflection of the profit and loss of the property from 1933 to 1938. I am saying it from accounting principles. I am taking the position that for the period 1933 to '35 that all those expenditures were preliminary, organization expenditures. Other businesses when they spend money and have no income of any kind, they are capitalized over a period of years, and they would be written off. It is a matter of setting it up properly. One is a capital item and the other is an expense item. It is two different matters pertaining thereto.

Where you are spending money to develop a mine, every dollar that you are spending, you are adding to your ultimate value. Therefore, it is wrong to set it up as an expenditure and show a loss during those years when you are really developing.

Exhibit 94 that reads "Schedule of Cash Receipts and Disbursements of Frank S. Tyler (as Per Black Book)," covers the years '34, '5, '6 and '7,

(Testimony of Louis R. Jacobson.)

and also covers the disbursements. I see nothing wrong in making the statement that that is a compilation from the black book.

With reference to Exhibit No. 95, only to the extent that he says "showing net profit from sales of Monolith stock," and, as I mentioned before, there is an item on here under "Receipts of Loans" as a receipt. One would have to take it from the books as they find it and make proper captions of [356] of those items, show what was absolutely received and profits, and then loss, and so forth.

I don't think you would find in the stock certificate ledger an account for a Mr. Pitcairn. I don't think Pitcairn ever became a stockholder.

I made the statement that those schedules would reflect the private sales of Frank S. Tyler and W. J. Shaw that had nothing whatsoever to do with the mine deals.

Now, Pitcairn only came in on the original partnership agreement—came in on the deal, and later he wouldn't go in on the deal and sold his stock to either Tyler or to Shaw. That would not balance off. No Consolidated stock was ever sold to them. They disposed of their Monolith stock.

H. U. Baker did not become a stockholder in Consolidated Mines. The same answer and explanation would apply.

There are quite a number of deals, and I don't recollect their names.

I kept the books to the best of my ability.

(Testimony of Louis R. Jacobson.)

Redirect Examination

I gave the gentleman from the S. E. C. all the cooperation I could, the Securities and Exchange, and also Mr. Norcop, to the extent of coming down at 7:00 or 8:00 o'clock in the morning and working all hours at my own time, and even to the extent of coming down without a subpoena from Phoenix.

I am making this statement because I don't want to leave any implication that I have tried to straddle a fence. I am [357] just a witness on both sides.

W. J. SHAW

a witness in his own behalf, further testified as follows:

Direct Examination (Cont'd)

(Examining letter) This is the letter we got out to the stockholders. It was not signed by anybody in particular. Just sent out as a letter of the committee and then the stockholders were supposed to sign and return it. There was a stockholders' meeting held subsequent to the sending out of this letter of December 22, 1933.

(The document referred to was received in evidence and marked "Defendant's Exhibit J.")

I attended that stockholders' meeting and did some talking at it.

(Testimony of W. J. Shaw.)

2,828 shares, as shown by the stock ledger, is not all the stock that Mrs. Shaw owned. As to how she came to own stock that is not in this ledger, stock that I purchased, and also 10,000 shares of the Gilbert stock that I took back. She owned about 30 per cent of the outstanding stock, which is around about 45,000 shares. There is 150,000 shares out, and she owns about 45,000 or 46,000 shares.

I have expended money on the mine since it was closed down. I think the mine closed down in December 1937. I put up the money for the assessment work for '39 and possibly for '38 and for 1940 H. U. Baker, the vice-president and substantial stockholder, advanced the money there to keep things in shape and do the assessment work.

And the three or four men that we have working there now, Mr. Baker advanced the money for that. They are cleaning out the tunnels up on the mine at the present time. They are working there now.

This money that I have advanced amounts to about \$4400. That includes about \$700 or \$800 attorneys' fees, about \$900 assessment work, \$1810 of claims that we paid off, which left a total of \$1250 which is all there is against the property now—it is clear and paid for—and \$287 or something near that for parts for the Diesel motors. And there were traveling expenses up there for Mr. Baker.

And then the moneys that I advanced to take care of the corporation from the time that it was shut

(Testimony of W. J. Shaw.)

down up to just during the assessment work and the things that I have just referred to. It might run up a couple or three thousand dollars. In addition, there was \$500 to Mr. Rowe, I put that up when we put him in charge of the property. In June or July of 1937 Mr. Rowe was appointed as assistant to the president and consulting engineer in full charge. He accepted that position. I have seen a letter in which he has stated that he was such an engineer. I have a photostatic copy of it.

I know Mr. Rowe's signature. That is his signature.

(The document referred to was received in evidence and marked "Defendant's Exhibit K.") [359]

Mr. Montgomery: This is dated June 17, 1937: It says:

"I am going over to McKisson in a few days, then I will know more about it then"—

that is the other property.

"more about it then. I am consulting engineer for the Consolidated. They have a good man now in charge, Mr. O'Shea, and the mine has started making money."

(By the Witness):

With respect to the selling of personally-owned stock of Mr. Tyler, Judge J. Hatfield, when he got the permit, told me personally that Mr. Tyler could do anything he wanted to with his personal stock.

(Testimony of W. J. Shaw.)

He could trade it, for instance, and he said if he wants to give it to a taxicab driver, he could. Oscar Trippet and Oscar Syvertson of Haight, Trippet and Syvertson, told me practically the same thing. I took advice from the attorneys I just mentioned.

We went to the Regional Director at Denver Colorado. There is a Regional Director of the S. E. C. there.

We followed the advice just the way they gave it to us. Outside of Mr. Tyler going to Colorado and making his own personal deals, the Securities and Exchange held there that he could do that, but he could not employ some broker to sell the stock for him. But he did do business in that state.

Cross Examination

I don't know the name of this Regional Director in Denver [360] that we talked with.

It was around in '36, maybe '35. I was not in Denver myself.

The conversation was held by the attorney, Mr. Wohlberg, and then a copy of the letter that the original director signed, or a copy of his opinion, was forwarded to the office here, that is, my office.

I didn't personally have any conversation with any regional director of the S. E. C. at any time on this stock issue. I can give you one of those records or opinion that we received from the S. E. C.

(The document referred to was received in evidence and marked "Defendant's Exhibit L.")

(Testimony of W. J. Shaw.)

DEFENDANT'S EXHIBIT NO. "L"

"L. WARD BANNISTER

Counselor at Law

801-7 Equitable Building

Denver, Colo.

June 19, 1936

Air Mail

Mr. J. W. Shaw,
634 South Spring Street,
Los Angeles, California.

My dear Mr. Shaw:

Your telegram of June 19th just received asking the result of the hearing on the Tyler situation and how to proceed with the transaction.

The Director of the Securities Commission, at the hearing held yesterday, said that the only way Tyler could proceed lawfully would be by returning all of the cement stock to those from whom purchased, taking receipts therefor, then, while in the State of Wyoming, explain to those same people the condition and standing and operations of the mining company and then re-trade the mining stock for the cement stock. The Director was also of the opinion that no broker or agent or employee of Tyler could take any part in bringing about a re-trade but that Tyler would have to do it himself and while in the State of Wyoming. Of course if there are trades to be made in the State of Colo-

(Testimony of W. J. Shaw.)

rado, then, according to the Director, Tyler would have to come into the State and after rescinding the present trades begin over again.

The Director was of the opinion that the law had already been violated by the transactions in Wyoming and that prosecution would lie, but he is not disposed to make any trouble providing from now on the law is observed.

All of the foregoing is the situation as it was at the end of the hearing and as it was up to last evening, but, this morning the Director received a letter from your own Los Angeles Securities office to the effect that your San Francisco Securities office, whereof the Los Angeles Office is a branch, has been investigating the mining company and Mr. Tyler's relations with it and has reached the conclusion tentatively at least that Mr. Tyler is an 'underwriter' within the meaning of Section 4, Paragraph 1 of the Securities Act and that, therefore, he is not entitled to have his transactions with the Wyoming Cement Company's stockholders *excp*ted from the general prohibitions of Section 5 above referred to, and not being exempted, would be *biol*ating the Act by making a re-exchange through the mails or by bringing mining stock into the State by automobile or otherwise or by taking the cement stock out of the State by mail, automobile or otherwise. The reason that Mr. Tyler is regarded as an 'Under-

(Testimony of W. J. Shaw.)

writer' by the Los Angeles office and now tentatively by the office here, is that he falls within the definition of an 'underwriter' contained in Section 2, Par. 11 where an underwriter is defined as 'any person who has purchased from an issuer with a view to, or sells for, an issuer, in connection with the distribution of any security of participates or has a direct or indirect participation in any such undertaking * * *'. The Director here, and I believe he said the Director in Los Angeles, is of the opinion that Mr. Tyler took the mining stock from the mining company with a view to its distribution, in other words, its general sale, in which event he, according to the definition is an 'underwriter'.

Now Section 5 contains the general prohibition against the use of the mails or interstate commerce for the purpose of selling or buying securities. Section 5, Par. 1 above referred to exempting transactions 'by any person other than an issuer, *underwriter*, etc' does not exempt Tyler because, according to the Director, Tyler acquired the mining stock from the mining company with a view to its distribution or re-sale to the public or to segments of the public, all of which, according to the Directors, is the same thing.

All of the foregoing represents the view and opinion of the Director at the present moment. According to that view or opinion there really

(Testimony of W. J. Shaw.)

is no way in which Tyler can proceed, except by bringing about a registration of the securities in the manner required by the Act. The Director also added this morning that the thing for Mr. Tyler to do, and his attorneys, is to go right to the Director in Los Angeles or San Francisco, and give the Director full information as to when the mining company was incorporated and when Tyler received the stock and whether the stock was acquired by Tyler with a view to its sale to the public or segment of the public, or whether he had at the time of acquiring the stock no such thought in view but rather of holding it and like anybody else probably meaning to sell it some time or other.

The Director here says this question of whether a person buys with a view of distributing the security is a question of fact and that one may buy with such a view or without it. If Tyler bought without it then our Director is still of the opinion that Tyler could go personally to Wyoming and after returning the cement stock take it back again by again giving for it the mining stock.

I wired you this morning as per confirmation enclosed. Your telegram does not indicate that you received it.

I recommend that Mr. Tyler and his attorneys get in touch with the Los Angeles or San Francisco Director and after acquainting the

(Testimony of W. J. Shaw.)

Director with all the facts of the situation find out what course would be agreeable to the Los Angeles or San Francisco Director. That is what the Denver Director suggests when he said 'See the Los Angeles or San Francisco Director and get a clearance'.

At Mr. Wohlberg's request we investigated our own Colorado Blue Sky Law and believe that as far as the State law is concerned Mr. Tyler could come into Colorado and while here make his stock exchanges. That is not to say, however, that he would not be violating the Federal law.

We have also just today and at Mr. Wohlberg's request, started a search into the Wyoming law to see what the law of that State would permit and are rather inclined to believe that the matter could be handled there in a way that would not violate the Wyoming law.

As to the laws of both of these states, however, it would be necessary to work out an exact method of proceeding. We finished our investigation of Colorado but not all of the Wyoming law when we received the message from the Denver Director and were informed by him of the developments in Los Angeles and San Francisco. In view of these developments I think it would be best to suspend work here until I hear from you, Mr. Tyler or Mr. Wohlberg further from Los Angeles.

(Testimony of W. J. Shaw.)

I have just talked with Mr. Wohlberg over long distance telephone at Cheyenne and have told him of today's developments in Denver. He will be leaving tonight for Los Angeles.

I shall be out of town Saturday noon to Monday morning.

Very truly yours,

(Signed) L. WARD BANNISTER

LWB:F''

(notation written on bottom of letter):

“According to Denver Director there is no escape from re-delivering the cement stock. Receipt should be taken for it.”

(A letter of June 22nd offered)

(The document referred to was received in evidence and marked “Defendant's Exhibit M.”)

(Testimony of W. J. Shaw.)

DEFENDANT'S EXHIBIT NO. "M"

"L. WARD BANNISTER

Counselor at Law

801-7 Equitable Building,

Denver, Colo.

June 22, 1936

Mr. W. J. Shaw,
634 South Spring St.,
Los Angeles, California.

My dear Mr. Shaw:

Re: W. J. Shaw

Mr. Wohlberg telephoned me from Cheyenne Friday evening or Saturday morning, I have forgotten which, saying that he had received a letter from the SEC in Denver saying that the Director would like to talk with him and wanted to know whether I thought he, Mr. Wohlberg, should go on to Los Angeles. I told him of the Director's new decision to the effect that he did not believe Mr. Tyler could go personally into Wyoming and also advised that I thought he could return with safety to Los Angeles. Today, and at Mr. Wohlberg's suggestion, I saw the Director, or rather his attorney, Mr. Garrity, and told him that Mr. Wohlberg had gone on back to Los Angeles but that he was perfectly willing to make an affidavit any time concerning what he had done in Wyoming on his trip. I may add that Mr. Garrity seemed satisfied.

(Testimony of W. J. Shaw.)

Saturday I wired you to the effect that I would write you today saying why the Director thinks that Mr. Forbes violated the Security Act. His line of reasoning is that since Section 5 prohibits any person from making use of the mail and transportation facilities for the sale and purchase of securities and since under the definition of Section 2(12) Mr. Forbes is a 'dealer' and since 'dealers' are not within the exemptions from Section 5 as those exemptions are set forth in Section 4, it follows that Mr. Forbes has violated the Act. The foregoing is the opinion and the grounds for it, of the Director and his attorney here in Denver as to Mr. Forbes.

Now returning to Mr. Tyler again. The Director and his counsel, Mr. Garrity, take the view that if Mr. Tyler bought as an investment and not with a view indicated at the time of resale that then Mr. Tyler could go in person into Wyoming and in making an exchange of stocks would not be violating the Act; the theory being that he is simply an ordinary person, not a 'dealer', not an 'underwriter' and not an 'issuer' and that since he is neither of these he is within the exempted class of 'any person other than an issuer, underwriter or dealer'. In other words, he is one of the 'any persons' who are exempted when not 'issuers, underwriters or dealers'. If, however, Mr. Tyler bought with

(Testimony of W. J. Shaw.)

a view of reselling, then according to the definition of an 'underwriter' found in Section 2(11) he would be an 'underwriter' and not within the exemptions allowed by Section 4(1) to persons other than 'issuers', 'underwriters' or 'dealers'. If he is an 'underwriter' then whether he conducts the business of exchanging the stock from his office in Los Angeles or goes in person to Wyoming he is not within the exemption referred to found in Section 4(1) and accordingly would be a violator of the Act. Such is the reasoning of the local SEC office in Denver.

I have already put in a *good* bit of time on this problem and could put in several hours more looking up what decisions have been rendered whether judicial or administrative under the Securities Act, but since the Los Angeles and San Francisco SEC offices are now in the picture, and since, therefore, you may want to deal with them, it may well be that you would want your own Los Angeles attorneys to do the research work if more is to be done. My own idea is that as a practical matter it will be well for your Los Angeles attorneys to get in touch with the Los Angeles SEC office. Possibly they can reach an understanding with the local office as to facts which would still make it possible to find a way for Mr. Tyler to go into Wyoming in his capacity as a private investor and make the exchange.

(Testimony of W. J. Shaw.)

There are two or three questions which I should like to ask: 1. When was the Mining Company incorporated? 2. When was the stock issued or disposed of to Mr. Tyler? These are questions designed to enable one to determine whether or not the Mining Company shares themselves are to be considered as exempted securities under Section 3(A)(1) of the Act which exempts from the general prohibitions of Section 5 'any security which prior to or within sixty days after the enactment of this title has been sold or disposed of by the issuer or bona fide offered to the public but this exemption shall not apply to any new offerings of any such security by an issuer or underwriter subsequent to such sixty days'.

Then Section 4 which exempts certain transactions from the general prohibitions of Section 5 exempts 'transactions by an issuer not involving any public offering'. How 'public' the offering has been I do not know but I imagine that it has been general enough to constitute a 'public offering'.

You may want to consult your Los Angeles attorneys about this point. Tomorrow I will give you the references to the Colorado and Wyoming statutes, these, however, would refer to State Law and not to Federal Law.

Yours truly,

L. WARD BANNISTER

LWB:T''

(Testimony of W. J. Shaw.)

(A letter of 23 offered)

(The document referred to was received in evidence and marked "Defendant's Exhibit N.")

DEFENDANT'S EXHIBIT NO. "N"

"L. WARD BANNISTER

Counselor at Law

801-7 Equitable Building

Denver, Colo.

June 23, 1936

Mr. J. W. Shaw

634 South Spring Street

Los Angeles, California

My dear Mr. Shaw:

Re: W. J. Shaw

* * * * *

It is very evident that before a really trustworthy opinion can be given on the right of Mr. Tyler to sell under Federal Law or within Colorado or Wyoming to sell under State Law there must be now, in view of questions raised by the Los Angeles office of the Securities Commission, a careful ascertainment of facts, including: the date the mining company was incorporated; the date when the stock to Mr. Tyler was issued; whether Mr. Tyler bought the stock with a view of reselling it or rather to keep for a time as an investment; whether Mr. Tyler con-

(Testimony of W. J. Shaw.)

trols the mining company; whether, if he does control it, it is through the ownership of the majority of the stock; or whether for some reason aside from stock ownership he dominates the company; whether in any way, direct or indirect, the company is to receive the benefit of any sales made by Mr. Tyler of his stock; what the resolutions of the mining company have to say as to the relations between Mr. Tyler and the company in the matter of acquisition of the mining property from him and issuance of stock to him; what is provided by any contracts between the mining company and Mr. Tyler as to the terms upon which he parted with his mining property in exchange for stock; what the language is of any escrow contracts between Mr. Tyler and the mining company or escrow contracts made by Mr. Tyler under the laws of California; what the relations are, if any, between Mr. Tyler and the committee of the cement stock holders. Now that the Los Angeles office of the SEC has commenced to interest itself, it becomes important to any attorney attempting to advise you, either by your regular Los Angeles attorney or myself, that the facts on the foregoing questions be carefully developed. Mr. Tyler will not want to run foul of the Securities Act of the Government or the Blue Sky Laws of either of the States. At the same time, if there is a way by which he may

(Testimony of W. J. Shaw.)

legally dispose of the stock, that, of course, is his objective.

Since Mr. Wohlberg is now back in Los Angeles and since the Los Angeles SEC has itself been investigating, I assume that your attorneys there will consider your problem as soon as possible. If there is anything further you desire don't hesitate to call upon me.

Yours truly,

(Signed) L. WARD BANNISTER

LWB:T"

(Telegram dated June 19th offered)

(The document referred to was received in evidence and marked "Defendant's Exhibit O.")

DEFENDANT'S EXHIBIT NO. "O"

COPY OF TELEGRAM RECEIVED

"June 19, 1936

W. J. Shaw,
634 South Spring Street,
Los Angeles, California.

Local Securities Director Previously Advised Me That Tyler Could Go Wyoming Personally Turn Back Cement Stock In Order To Rescind Present Transaction Then Take It Up Again By Exchanging Mining Stock Therefor How-

(Testimony of W. J. Shaw.)

ever This Morning Director Received Communication From Los Angeles Securities Office Saying San Francisco Securities Office Has Been Investigating And In Consequence Believes Tyler Took Stock With View Of Distributing Same In Which Event Is An Underwriter Within Meaning Of Section Three Subdivision Eleven Of Securities Act And Therefore Not Eligible For Exemptions Under Section Four Paragraph One And Therefore Subject To General Prohibitions Contained In Section Five Paragraph A stop Director Says Tyler Should Settle Question Of Whether He Is An Underwriter With Los Angeles Securities Office And That He Is Courting Danger If He Goes Wyoming Before Doing So stop Director Here Reports Tyler Absent From Los Angeles Hence Am Wiring You

L. WARD BANNISTER

CHG

Bannister Acct.”

As to a letter from the regional director of the S. E. C., I don't think it was signed—the one I got, I think, was more or less an opinion from the attorneys. I think there was a copy of it, however. In fact, I know there was a copy. [361]

We have an opinion from the S. E. C., a copy of a letter.

(Testimony of W. J. Shaw.)

The final Monolith Midwest committee that went to work with the Pacific Bank in San Francisco was W. J. Morgan; C. P. La Grange; and E. S. Harding. Mr. Harding lived about a year after he first started to act. I think Mr. Alexander took his place on the committee.

There was not an executive committee of the Monolith Midwest Protective Committee from the outfit after the bank started to receive deposits. That executive committee was formed practically the same time or right after the other committee was organized.

The executive committee did not come into being about the same time that the Monolith Protective Committee came into being. The Monolith Protective Committee is another committee.

As to the record where the Pacific Bank was closing out after the Midwest settlement, dated October 31, 1936, this is the Monolith Stockholders Protective Committee, but I understood you to say that this was organized at the time that the stock was deposited. There is a Monolith Executive Committee that was organized immediately after the committee that I thought you were referring to was organized.

As to this document winding up the Midwest so that they could close out the Pacific Bank in San Francisco, the signatures are Henry L. Wikoff, M. G. Alexander, Sidney G. Marcus and W. J. Morgan. The committee had not been enlarged to

(Testimony of W. J. Shaw.)

four. Mr. Morgan always insisted on approving and signing, whether [362] he was a member or not. That was the understanding. Those are individuals, those names there, the four. It is typed off. But none of them are the original. Mr. Morgan is the only original member left. That is why he had to sign everything.

As to what is typed on here, "Monolith Stockholders Committee," signed W. J. Morgan, Sidney G. Marcus and M. G. Alexander, that is the Monolith Stockholders Committee.

And then we have the executive committee of the Monolith Stockholders Committee, and those names are the same as the parent committee, but the third member of the executive committee is Henry L. Wikoff. He succeeded La Grange when he died.

As to the necessity for an executive committee, Mr. Morgan said he didn't want the responsibility of signing checks, and he suggested that we should organize an executive committee to do that, which was quite customary.

As to a letter of the Monolith Stockholders Committee dated September 27, 1935, addressed to the Pacific National Bank, 333 Montgomery Street, San Francisco, Mr. George S. Burks: "Gentlemen, upon presentation of this letter kindly release the Monolith Portland Cement stock which is represented by the following certificate of deposit." And one that says certificate 132, number of shares 654,

(Testimony of W. J. Shaw.)

name in which stock is held Seeger and Irma Seeger, and the letter concludes "Thanking you for your kind attention, yours very truly, Monolith Stockholders Committee." The signature is mine.

[363]

I was never a member of the Monolith Stockholders Committee, or of the executive committee.

As to a letter dated March 25, 1936, the same stationery, to the same addressee, this bank, the same tenor, which refers to stock of the Schumacher, that is also signed in the same fashion, Monolith Stockholders Committee, W. J. Shaw.

I believe I testified that I was made executive secretary around about this time.

Just for the purpose thought of getting stock released when Mr. Morgan was in Oakland and the other members out of the city.

I never used any title. It was a question of form. The girl would write them out and I would sign them.

The letter of October 29, 1935, on the same stationery to the same addressee about the same tenor referring to stock for James Kruse, giving the certificate number and the number of shares, is signed in the same fashion; one covering the John W. Cline and John Wesley Cline, Jr., is signed in the same fashion and addressed to the same bank.

This one dated September 27, 1934, on the same stationery, addressed to the same bank, relating to certificate of deposit, and showing 40308 pre-

(Testimony of W. J. Shaw.)

ferred, Maria M. D. Craig, is signed Monolith Stockholders Committee by (written) W. J. Morgan, Chairman, and under that the letter "B"; I don't know who "B" is.

As to this one,—the Goodrich people, the Monolith Com- [364] mittee letter dated May 27, 1937, and is signed: Monolith Stockholders Committee by, W. J. Shaw.

As to this one on my personal stationery, containing some other shares of Regina Woodruff, dated February 23, 1934, addressed to Lybrand, Ross Bros. & Montgomery, at 510 South Spring Street, Los Angeles: "This is to certify that the following Monolith stock now on deposit with the Pacific National Bank of San Francisco is subject to release for the reason that the 50 cents per share has been paid and under the terms and conditions of the depositary agreement said stock is not subject to any lien."

And her name, among many others, appears for 14 shares.

"Demand is hereby made upon you to release the aforesaid mentioned stock. Yours truly, Monolith Stockholders Committee, W. J. Shaw."

That came in from the auditors. This one is dated October 24, 1934, addressed on the same Monolith Committee stationery to the bank having Patrick F. Murphy for 15 shares, signed Monolith Stockholders Committee, W. J. Shaw, Executive Secre-

(Testimony of W. J. Shaw.)

tary. That is addressed to the Pacific National Bank, release of stock.

As to this one on the same stationery of the committee dated July 30, 1935, addressed to Pacific National Bank, covering certificate No. 239 for 102 shares for Patrick F. Murphy and signed Monolith Stockholders Committee without any typing at all, just W. J. Shaw, it says 300 shares to [365] Herman Cramer and also kindly release to William C. Fastnow Company, brokers.

If any of them sold the stock and wanted the brokers to release it, I released it for brokers too.

This one is October 15, 1934, a letter on the committee stationery to the same bank covering the Garfield Voget, 100 shares of common L. C.-263 of the Monolith Portland Cement Company, signed Monolith Stockholders Committee, W. J. Shaw, executive secretary.

And another one for the Vogets on April 1, 1936, addressed to the same bank on the same stationery, certificate 625, number of shares being 600, and under where it says "Name in Which Stock is Held," "Garfield Voget and Rose A. Voget," those are representing, according to the letter, Monolith Midwest preferred stock; that is, certificates of deposit representing that stock, and that is signed Monolith Stockholders Committee, W. J. Shaw, and then typed under there, W. J. Shaw.

The Pacific National Bank of San Francisco, depositary, did decline to release certificates of de-

(Testimony of W. J. Shaw.)

posit for either Monolith or Midwest on my signature and demand. That was just before I had written authority from Mr. Morgan, a member of the committee, it would be all right to release the stock with my signature.

As to Exhibit L; Exhibit N; Exhibit O; pertaining to the discussion about what the regional director in Denver of the [366] S.E.C. had to say on the proposition,—whether that was the last advice we received on the subject. I think we got some advice from the Regional Director of San Francisco. I believe that advice came through Raymond Haight or Oscar Trippet.

The Court: It has been stipulated that it (the stock of Consolidated Mines) wasn't registered in the S.E.C.

As to an assignment by Mr. Tyler to me—of Monday, July 1, 1935, I suppose I received the original of it from Mr. Tyler.

Mr. Norcop:

“For and in consideration of the assistance rendered to me by W. J. Shaw in the formation of that certain mining partnership entered into between myself and sundry other individuals under date of February 6, 1934, and for certain cash advances made to me for other considerations received, I hereby assign to W. J. Shaw, an eighty percent (80%) interest in any and all net income to be realized from the consideration received by me out of said partner-

(Testimony of W. J. Shaw.)

ship agreement, and from the net capital stock I am to receive as my forty percent (40%) interest in the corporation formed, namely, the Consolidated Mines of California, when such stock shall have been issued to me as and when authorized by the Corporation Department of California.

“It is understood that under the above-mentioned [367] partnership agreement I have incurred certain expenditures in the development of the mine properties, the amount now being in excess of \$35,000.00; and that I have still to expend additional sums before I shall have fulfilled my part of the agreement; all of which is in accordance with said partnership agreement. The amount to be expended is, at the present time, undeterminable, and will be based on the Engineer’s reports, etc. The net profits are, therefore, to be arrived at only after all the terms of the partnership agreement have been fully performed.

“It is understood that the stock of the Consolidated Mines of California, to be issued to me, is to stand on the books of that Company, in my name, but I will, on demand, authorize the transfer of said stock to W. J. Shaw or his nominees.”

By the Witness:

As to exhibit No. 37, my income tax return for the year 1935, I couldn’t give you any information

(Testimony of W. J. Shaw.)

about income tax. I signed it, and it was made up for me by Mr. Jacobson.

As to whether Mr. Tyler and I carried on thereafter with reference to the Tyler partnership agreement and in accordance with this assignment that he made to me, I couldn't answer that. I believe we had some other understanding once [368] or twice besides that, but I don't remember of any other agreement signed up. It might have been, though.

As to my income tax return of 1936, Exhibit No. 38, I see it. I see the last item is—amount paid to Frank S. Tyler as share of profit on sale of Consolidated Mines stock, total consideration received therefor \$43,838.05, Frank S. Tyler receiving 20 percent thereof in accordance with agreement and that Tyler's 20 percent is set out as \$8,735.60. Is that all charged up—giving Morgan that here, \$8,000? He got a whole lot more than that in the year of 1936. I signed this return.

Going back to the year 1934 return, I would not be able to say whether or not that was income from the Tyler partnership agreement. I was buying and selling all the time, probably fifty, a hundred, maybe more of sales in stocks.

On this document marked No. 23, that is my handwriting on page 4. When I presented that document to Mr. Porteous I had no authority, but I was a pretty big creditor at that time, and I went up there to get these properties back because they had forgot to send the regular monthly payment,

(Testimony of W. J. Shaw.)

and they lost them, and I was worried about them and wanted to get them back. That was the middle of October, 1936. I was not a stockholder in Consolidated Mines other than under this agreement with Mr. Tyler, but Mrs. Shaw was. I never was an officer of the Consolidated Mines of California. I hoped to be though. [369]

The agreement between Lytle and McKisson on the one hand, and Tyler on the other, dated the 18th of December, 1933, has my initials on the first page. The "F. S. T. by W. J. Shaw" is in my handwriting. Maybe that "O.K." is, too. The reason [369a] for those initials there was some change made in the body of the document and Lytle initialed it and I initialed it. It goes to the top of the second page, and "O.K. by F.S.T. by W.J.S." is in my handwriting, and signed by Mr. Tyler. That is his signature. Signed by Lytle, McKisson and Tyler.

As to by what authority I was negotiating there with Mr. Lytle under that Tyler agreement of the commencement on the 18th of December, 1933, I was helping Mr. Tyler. He had never had any experience in these kinds of agreements. It looks like I was trying to make a better agreement there than I got. I thought I could get it for cash at that time for less money.

As to this letter dated December 14, 1936, I recall having seen that letter here in the case. It related to these same properties, but this deal didn't

(Testimony of W. J. Shaw.)

go through here. This is a different deal from the one I made on the other. There is only one kind of stock of the Consolidated Mines—common stock. That is my signature, but that deal didn't go through. I didn't mean anything in particular by common stock.

As to a photostatic copy of the signature cards of the California Bank—that is correct.

As to a Pledger check dated 8-7-1935, payable to Frank S. Tyler in the amount of \$1,419.72, and on the back of it it has the restrictive endorsement, "For deposit, Frank S. Tyler, by W. J. Shaw." As to whose handwriting that is, first two lines, "For deposit," they are all three mine. [370]

(Original of Government's Exhibit No. 101 for Identification offered, same being a letter of December 19, 1933, addressed to W. J. Morgan, Oakland, California.) Yes. I signed that letter.

(The document referred to was received in evidence and marked "Government's Exhibit No. 101.")

As to Exhibit No. 104, the matter on the front of two cards,—the top card is in my handwriting in its entirety, and that reads:

"To W. J. Morgan. You can cancel your agreement with Tyler if I do not accept your settlement with me of date.

W. J. SHAW."

(Testimony of W. J. Shaw.)

And the second card is also in my handwriting. That second card reads: W. J. Morgan, Cash, 1607. Stock, 643." The number of shares he is to put in the partnership agreement and the amount of cash. I gave that a long time ago when we signed up the partnership agreement, that card you have there, on the number of shares. That was given to Morgan a week or in the month before we incorporated.

Government's Exhibit No. 102, undated, bears my signature, the word "Jack." This one on the stationery of the Dos Cabezas Company, Exhibit 103, dated February 1, 1934, bears my signature and my handwriting as a memo.

This letter, on the stationery of W. J. Shaw, dated February 22, 1934, is signed by me. I wrote those three [371] letters, evidently. I signed them. I don't remember them though. I wrote that at the hospital. I kept a little typewriter there at times.

Concerning the situation that I should not be known in this Monolith Committee until I had collected all the evidence, [371a] that I was working undercover until I had collected all the evidence as chief investigator for the committee to use against the Monolith people. I meant by that, that until I had given the auditor sufficient information to go ahead and get the report, why I would stay in the background. That probably took 60 or 90 days.

Morgan and Harding ran the San Francisco office until the office was opened down here. A. R. Griffith and a man by the name of McIntyre ran the

(Testimony of W. J. Shaw.)

Los Angeles office. McIntyre was just an office man. He wasn't connected with the committee in an official capacity. I took charge of the Los Angeles office for the Monolith Committee after that, put my name in receivership against Burnett in 1932 to get a receiver appointed in Nevada for the Midwest. I came very much out in the open. I went over to Burnett and told him to return the stock and so much cash and I would dismiss the suit and quit.

I know Mrs. Shaw owns 37,000 shares, and I believe she owns around about 40,000, and with that 2,000 shares there she must own around about 47,000 shares.

Wikoff died right after he gave us orders to close down the plant. That was in '37.

I believe Reed J. Sampson, of the State Division of Mines, took Gilbert's job. I understood he was on quite a while.

I base my statement that Mr. Baker is a stockholder [372] because I sold him the stock myself. I don't think W. J. Shaw and Company is a stockholder.

The S. E. C., I understand has had the books. They couldn't be kept up. We couldn't operate without the books.

(There was produced a ledger account, Shaw, W. J. and Company, 634 South Spring Street, Los Angeles, California, June 21.)

It looks like 1937.

(Testimony of W. J. Shaw.)

Mr. Norcop: Certificate 744 for 10,000 shares.

By the Witness: W. J. Shaw has got more assets than I thought they had. I have never seen any stock registered to them.

Redirect Examination

The Consolidated Mines Company does not owe me any money now. That \$37,000 I charged that off. I gave it to them. I said, "Never charge any money to me." They could have it.

As to the reasons for keeping undercover, there were several. First, I had the San Diego Portland Cement Company organized down in San Diego and started building a cement plant down there. It was just some competitors sending out letters trying to say I was trying to get control of this company. Mrs. Shaw, as a stockholder, is on the books there. That stock I brought back there is three certificates I assigned over to her. It has never been transferred.

(A letter was produced.) [373]

(Questions by Mr. Norcop)

The original of this was sent direct to the stockholders.

As to whether we sent any accompanying letter with this one on which I had my signature, there was one letter sent out. Either to that or another one that followed it on another meeting. I don't know whether it was that or not.

(No motion to strike any testimony was made at the conclusion of the trial.) [374]

INSTRUCTIONS TO THE JURY

The Court: All the instructions are written except for some formal instructions at the end, which will be oral.

Gentlemen of the jury, the law of the United States permits a judge to comment on the facts in the case. Such comments are mere matters of opinion which the jury may disregard if they conflict with their own conclusions upon the facts. This for the reason that the jurors are the sole and exclusive judges of the facts in each case. However, it is not my custom to exercise this right nor shall I exercise it in the present case. I shall leave the determination of the facts in the case to you, satisfied as I am that you are fully capable of determining them without my aid. However, it is the exclusive province of the judge of this court to instruct you as to the law that is applicable to the case, in order that you may render a general verdict upon the facts in the case, as determined by you, and the law as given you by the judge in these instructions. It would be a violation of your duty for you to attempt to determine the law or to base a verdict upon any other view of the law than that given you by the court—a wrong for which the parties would have no remedy, because it is conclusively presumed by the court and all higher tribunals that you have acted in accordance with those instructions as you have been sworn to do.

You are here for the purpose of trying the issues of fact that are presented by the allegations in the

indictment and the plea of the defendant thereto. This duty you should perform uninfluenced by pity for the defendant or by passion or prejudice on account of the nature of the charge against him. You are to be governed, therefore, solely by the evidence introduced in this trial, and the law as given you by the Court. The law will not permit jurors to be governed by mere sentiment, conjecture, sympathy, passion or prejudice, public opinion or public feeling. Both the public and the defendant have a right to demand, and they do so demand and expect, that you will carefully and dispassionately weigh and consider the evidence and the law of the case and give to each your conscientious judgment; and that you will reach a verdict that will be just to both sides, regardless of what the consequences may be.

The offenses which the defendant is charged with are using the mails to defraud and violation of the Securities Act of 1933.

In this connection you are instructed that the indictment on file herein is a mere charge or accusation against the defendant and is not any evidence of the defendant's guilt and no juror in this case should permit himself to be, to any extent, influenced against the defendant because or on account of such indictment on file.

The jury are the sole and exclusive judges of the effect and value of the evidence addressed to them and of the credibility of the witnesses who have testified in the case, and the character of the wit-

nesses as shown by the evidence, should be taken into consideration, for the purpose of determining their credibility and the fact as to whether they have spoken the truth. And the jury may scrutinize not only the manner of witnesses while on the stand, their relation to the case, if any, but also their degree of intelligence. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testified; his interest in the case, if any, or his bias or prejudice, if any, against one or any of the parties, by the character of his testimony or by evidence affecting his character for truth and honesty or integrity or by contradictory evidence; and the jury are the exclusive judges of his credibility.

A witness may also be impeached by evidence that he made, at other times, statements inconsistent with his present testimony as to any matter material to the cause on trial.

A witness false in one part of his or her testimony is to be distrusted in others; that is to say, the jury may reject the whole of the testimony of a witness who has willfully sworn falsely as to a material point; and the jury, being convinced that a witness has stated what was untrue, not as a result of mistake or inadvertence, but willfully and with the design to deceive, must treat all of his or her testimony with distrust and suspicion, and reject all unless they shall be convinced that notwithstanding the base character of the witness, that he or she has in other particulars sworn to the truth.

The law does not require any defendant to prove his innocence, which in many cases might be impossible, but on the contrary, the law requires the Government to establish his guilt and that by legal evidence and beyond a reasonable doubt.

The presumption of innocence with which the defendant is, at all times, clothed is not a mere form to be disregarded by you at pleasure, but that it is an essential, substantial part of the law and binding on you in this case, and it is your duty in this case to acquit the defendant unless the evidence in the case convinces you of his guilt as charged beyond all reasonable doubt.

If you can reconcile the evidence before you upon any reasonable hypothesis consistent with the defendant's innocence, you should do so, and in that case find the defendant not guilty. You cannot find the defendant guilty unless from all the evidence you believe him guilty beyond a reasonable doubt.

A reasonable doubt is a doubt based on reason, and which is reasonable in view of all the evidence. And if, after an impartial comparison and consideration of all the evidence, or from a want of sufficient evidence on behalf of the Government to convince you of the truth of the charge, you can candidly say that you are not satisfied of the defendant's guilt, you have a reasonable doubt; but if, after such impartial comparison and consideration of all the evidence you can truthfully say that you have an abiding conviction of the defendant's guilt, such as you would be willing to act upon in

the more weighty and important matters relating to your own affairs, you have no reasonable doubt.

Reasonable doubt is not a mere possible doubt; because everything relating to human affairs, and depending on moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.

You are instructed that while the defendant in a criminal action is not required to take the stand and testify, yet if he does so, his credibility and the value and effect of his evidence are to be weighed and determined by the same rules as the credibility and effect and value of the evidence of any other witness is determined. If a defendant elects to take the stand and testify in his own behalf, his testimony is to be weighed in the same manner and measured according to the same standard as the testimony of any other witness, and the tests for determining credibility of witnesses as given you, in another part of the instructions, are to be applied to his testimony alike with that of all other witnesses.

The alleged artifice or scheme upon which the first thirteen counts of the indictment predicates the criminal use of the mails, being the same in each count, general instructions contained herein will be applicable to all of the counts; and in your delibera-

tions you should apply to each count all of the rules of law that I have given, unless otherwise specifically indicated.

By the provisions of the statute under which the first thirteen counts of the indictment in this case are drawn, it is made an offense for any person, after having devised any scheme or artifice for obtaining money or property by means of false or fraudulent pretenses, representations or promises, for the purpose of executing such scheme or artifice, or attempting so to do, to place, or cause to be placed, any letter, postcard, package, writing, circular, pamphlet, or advertisement, addressed to any person residing within or outside of the United States, in any post office, or station thereof, or street or other letter box of the United States, or authorized repository for mail matter, to be sent or delivered by the Post Office Department of the United States.

The offense contains two essential elements:

First: that there shall be devised a scheme or artifice for the purpose of obtaining money or property by means of false pretenses; and, second, that for the purpose of executing such scheme, or attempting so to do, there shall be placed a letter or postcard, writing or circular, in any post office or mail box of the United States, to be sent or delivered by the post office establishment. Both of these elements must be established before conviction is authorized. The words "scheme" and "artifice", as used in the statute, include any plan or course of

action intentionally devised for the purpose of deceiving and tricking others, and thus fraudulently obtaining their money or property. It is not essential to the making out of the charge that the scheme or artifice should have been successfully carried out. Nor is it a defense for a defendant so charged to show that the persons with whom he dealt and intended to deal received some return for an investment of money, or that they would have received some return for such investment. It is essential only that it be shown that the scheme be formed with a fraudulent intent. It is necessary that the government prove that the scheme or artifice employed by the defendants was of the kind charged in the indictment. It is not necessary that it be proved that the scheme and artifice included the making of all the alleged false pretenses, representations and promises, but it is sufficient if anyone or more of them be proved to have been made, and that the same were designed to and would be reasonably effective in deceiving and defrauding persons with whom the defendants proposed to and did deal.

Any false, deceptive or deluding pretenses put forth through the mails to obtain other people's money is an offense under this law. Mere falsity of representations is not, however, sufficient. A false representation does not amount to fraud unless it is made with fraudulent intent.

The letters mailed need not be effective to carry out the scheme, need not be of themselves calculated to do so, need not be criminal or objectionable, need

not disclose a fraudulent purpose and need not show on their face that it was in furtherance of the scheme; but they must have some relation to, and be a step in the attempted execution of, the scheme, and must be mailed (or delivered) with the intent to aid its execution.

In determining the matter, it is immaterial whether you do or do not believe that the persons who parted with money were or were not gullible or whether they should or should not have parted with the money under such circumstances, if in fact there was a scheme to defraud and the mails were used for the purpose of executing the scheme by the defendant, and they are proved beyond a reasonable doubt.

The essence of the offense is the use of the mail in execution of a scheme to defraud. And the mails must actually be used. And where, as here, it is charged that the use of the mail consisted of placing or causing to be placed in the mails and knowingly causing to be delivered by the United States mails according to the directions thereon certain letters as set forth in the various counts of the indictment, such use of the mails by the defendant must be proved beyond a reasonable doubt before he can be found guilty under any of the counts of the indictment. This fact, like any other fact, may be established by direct or by circumstantial evidence, as these terms are defined in these instructions. If the fact of such use of the mails be not established

beyond a reasonable doubt, you must find the defendant not guilty even though you believe that a scheme to defraud the recipients of the letters sent out in the indictment, existed and that the defendant carried on negotiations in regard thereto.

You are further instructed that the charge that the representations made in said indictment letters are false and untrue, or representations made during the negotiations with the recipients of said indictment letters are false and untrue, must be established by the Government and all presumptions as to innocence compels you to assume the truthfulness of said representations, unless the Government has established beyond a reasonable doubt the falsity of said representations.

Before you can find the defendant guilty on any one of the counts, first you must find that the representations set out in the scheme or artifice were false and untrue, and that the defendant had actual knowledge that they were false and untrue.

The intent of a defendant charged under the provisions of the law stated is a material element necessary to prove the offense, and in arriving at a decision upon that question all the facts and circumstances shown in the case as touching the conduct of the defendant should be considered. If a man shall make to another a representation as to things which do not exist and it appears that he had no reasonable ground to believe that the fact is as he states it, such statements and conduct are to be taken into consideration in determining whether an

innocent misstatement was made in good faith, or whether the intent was that others were to be deceived and that the first person should reap a benefit and the other suffer a loss. Criminal intent may be implied from the acts and conduct of an accused. His acts and his conduct, as shown by the evidence, considered in their relation to the charge made, may establish satisfactorily a criminal intent. If the statements alleged to have been falsely and fraudulently made by a defendant were made in good faith, and the defendant believed at the time, or had reason to believe them to be true, they would not be evidence of fraud.

You are further instructed that you must disregard all representations which contain matters of opinion or promises of future performance, unless you find that said statements of opinion were made with a reckless disregard for the truth, or with the actual knowledge of the falsity thereof, or that at the time said promises were made by the defendant, they were not made in good faith, and that the defendant at said time had no intention of fulfilling said promises.

In order to find the defendant guilty, it is not necessary to determine that money was actually sent through the mails to him or to any other person at his solicitation. The use of the mails may be unpremeditated and incidental to the scheme to defraud.

Statements or expectations as to future or incidental events or as to expectations or probabilities,

or what will be or is intended to be done in the future or mere expressions of opinion about what will occur in the future or as to results as to what will be anticipated in the future, from present existing conditions, if made in good faith, do not constitute fraud, although they actually turn out to be false.

You are, therefore, instructed that you must disregard all representations which contain matters of opinion or promises of future performance, unless you find that said statements of opinion were made with a reckless disregard for the truth, or with the actual knowledge of the falsity thereof, or that at the time said promises were made by the defendant, they were not made in good faith, and that the defendant at said time had no intention of fulfilling said promises.

On the other hand, false representations and promises made with knowledge of such falsity and in furtherance of a scheme to defraud are not justified or excused by the hope or expectation, in the mind of the person making such false representations, or participating in the scheme to defraud, that such scheme would ultimately or eventually be successful and profitable.

I instruct you that you are not permitted to draw any inference unfavorable to the defendant from the mere fact that he engaged in a speculative business, or from the fact that his venture did not prove successful.

The good faith of the defendant is to be determined and his several acts and declarations are to be construed and interpreted in the light of conditions as they appeared to the defendant to be at the time the statements or promises were made. The defendant is not on trial for errors of judgment. He is on trial for a criminal offense, an essential element of which is an evil or criminal intent. This, the Government must prove to your satisfaction, beyond a reasonable doubt and to a moral certainty, and if the Government has failed to do so, then it is your duty to acquit the defendant.

The instructions which are to follow relate to the Securities and Exchange counts, that is, Counts 14, 15 and 16, although, of course, the general instructions which I have given relating to reasonable doubt and the other principle of law apply alike to all the counts in the indictment.

Counts 14, 15, and 16 of the indictment charge the defendant with violation of the provisions of the Federal Securities Act which, among other things, prohibits the use of the mails to sell or deliver after sale any security unless such security has been registered with the Securities and Exchange Commission, the branch of the Federal government having charge of such matters.

The Act requires that a registration statement describing the securities and the issuer be filed with the Securities and Exchange Commission and the further requirement that a prospectus summarizing the important information of the regis-

tration statement be furnished to all persons to whom securities are offered.

The registration statement must be signed by the issuer and its controlling officers. They and any experts who assist in the preparation of the statement must take responsibility for the accuracy of the registration statement.

To secure compliance with the requirements regarding registration of securities the Federal Securities Act of 1933, among other things, prohibits the use of the mails to sell or deliver any security after sale unless a registration statement is in effect as to such security.

The Section of the Act which the defendant Shaw is charged with violating is Section 5(a)(2), which reads as follows:

“Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly—

“(2) To carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.”

In determining whether or not there has been a willful violation of this Section, as alleged in Counts 14, 15 and 16, you must determine whether or not there was a registration statement in effect as to the shares of stock of Consolidated Mines of California, whether or not such securities were actu-

ally sold to the witnesses Goodrich, Arnold and Woodruff, or any of them, and you must further determine whether or not the defendant Shaw caused any of such securities of the Consolidated Mines of California to be carried through the mails for sale or for delivery after sale.

The burden of showing an exemption from registration, if exemption is claimed, rests on the defendant. The fact that the stock sold was or was not personally owned stock is immaterial so far as the Federal Securities Act is concerned.

In determining whether or not the mails were willfully used, you must consider whether or not such mailing was unintentional or whether it was deliberate. Willfully means intentionally as opposed to negligently or inadvertently.

In determining whether or not the defendant Shaw caused the securities in question to be carried through the mails for sale or delivery after sale, it is not necessary for you to find that he personally mailed them or personally directed that they be mailed. If the mails were used in the ordinary course of business so far as the stock selling activities were concerned, and if the defendant Shaw was engaged with Frank S. Tyler and others and they were associated together and acting in concert in carrying on the stock sales activity, then any mailings of securities in the regular course of such sales activities are binding on defendant Shaw.

Counts 14, 15 and 16 are separate and distinct from the first 13 counts of the indictment. Counts 14, 15 and 16, do not involve any of the charges contained in the first 13 counts. They each charge a wholly different crime and a violation of a wholly different statute, and are based on alleged violations of the registration provisions of the Securities Act of 1933. So far as these three counts are concerned, it is wholly immaterial whether or not any fraud whatsoever was actually committed in the sale of these securities.

The indictment in Counts 14, 15 and 16 charges that the defendant "wilfully and unlawfully" did the acts and things alleged in the indictment. In this connection you are instructed that there is a very real and vital difference between simply doing an act and doing an act wilfully. In the first case no bad intent or purpose is involved, while in the second case of "wilfully" doing the act, the elements of guilty knowledge and bad purpose are involved and constitute the gist of the offense. The use of the word "wilfully" in that connection in an indictment implies not merely "voluntarily" but also an evil intent and bad purpose to do wrong.

So that in this case, even though you should be convinced beyond a reasonable doubt that the defendant did the acts and things alleged in these counts of the indictment voluntarily, nevertheless your verdict must be for the defendant unless you are convinced beyond a reasonable doubt that the defendant did the acts and things alleged in the in-

dictment with evil intent and bad purpose to do wrong.

In a prosecution for selling securities in violation of the Securities Act of 1933, if the defendant charged with making a sale of the securities acted in good faith in honest belief that he had a right to make such sale, then he is not guilty of any criminal offense.

Ordinarily, advice of counsel is not a defense to the commission of an offense. However, where an offense requires a specific criminal intent, the fact that a defendant acted in good faith on advice of counsel, after full disclosure of all facts, may negative the existence of the criminal intent without which the offense is not proved, or may raise a reasonable doubt in the jury's mind as to the guilt of the defendant.

Your first duty on retiring to the jury room to begin deliberations in this case will be to select one of your number as foreman. In federal courts, in both civil and criminal cases, unanimity is required for a verdict. In other words, all must agree before a verdict can be returned.

For your benefit and to assist you, the Clerk has prepared a blank form of verdict which reads: Title of the court and cause: "We, the jury in the above-entitled cause, find the defendant William Jackson Shaw as charged in the indictment."

Then there is a similar line for each one of the 16 counts in the indictment.

Now if you find the defendant guilty as to Count 1 of the indictment, you will have your foreman write the word "guilty" in the blank space in front of that count. If you find him not guilty, you will write the words "not guilty". That applies to every count in the indictment.

By what I say, however, it does not mean to intimate that you have to make any particular finding consistent as to all the counts. You may find one verdict as to one count and another verdict as to another count.

That applies not only as to Counts 14, 15, and 16, which relate to a different offense than the first 13, but that applies also as to all the counts relating to the same offense.

In other words, there is absolute freedom of action as to the conclusions you reach as to every one of these counts. You are free to determine, according to the evidence and your conscience, as to whether as to a particular count a verdict should be one way or another, and then you must use the same kind of independent judgment as to all others.

When a verdict has been arrived it must be dated at the place indicated and signed by your foreman and returned to this court.

Now before I swear the bailiffs to take charge of the jury, it becomes necessary to dispose of the two alternate jurors, and before I excuse them I desire to address myself to the first 12.

This case has taken several weeks to try. Of course, we haven't worked full time all the time,

and the first week we really worked only one day. I think there have been 12 trial days so far.

Deliberations may take time. It is the kind of case where the jury should have ample opportunity to discuss and deliberate in the matter, and before I excuse the two alternates, I want to know if there are any members of the 12 who, because of illness, feels that he may not be up to the strain that any deliberation may require. If so, this is the time to speak. And also if there is anyone—there is a possibility, of course, gentlemen, that the moment you go out of here you don't go home until you get a verdict, and there is a possibility that you may be locked up—not in the sense of being locked in jail, but I mean you will not be allowed to separate, they will take you to a nice hotel if you stay out overnight—so the question of any consideration in your family, any situation such as illness in the family, if there be that, I want to know because, as I say, the moment you go out you have to remain together until you have arrived at a verdict.

Juror Daniels: Judge, your Honor please, I just want, if you will permit me to say a word in regard to—not only sickness, but——

The Court: No. The only question you can speak on is merely in regard to this situation.

Juror Daniels: I just want to speak directly to your Honor on appreciation of my service here.

The Court: That is all right. Do that some other time.

Juror Daniels: I didn't know whether I would get back or not, and I wanted to——

The Court (Interrupting): That is all right. I will be here when you bring in the verdict. You can do that later.

All right.

I gather then that every one of the 12 jurors, regular jurors, feel that they can begin deliberation and have no ground for being excused.

(No response.)

Then before I excuse the alternate jurors, I am going to ask the usual question whether there are any exceptions either by the Government or the defendant to the charges as given by the Court.

Mr. Montgomery: No, your Honor.

Mr. Norcop: The instructions are entirely satisfactory to the Government.

The Court: All right.

Mr. Norcop: May I make one inquiry?

The Court: Yes.

Mr. Norcop: As to whether or not it is the policy—this is the first long case, as your Honor has said before, that I have tried in this Court—to allow the jury to examine any of the exhibits if they so desire.

The Court: I will instruct the jury that they may have the indictment and the instructions by asking for them. If there is any exhibit that they need during deliberations, it will be sent out to you if you make your desire known to the bailiff or send me a

note identifying the exhibit so that I will know what you want.

Mr. Montgomery: I make objection to the personally owned stock instruction with respect to the Federal Securities and Exchange Act, where you said that they did not recognize the difference between personally owned stock and others. I have forgotten just how the language read. I want to register a formal exception.

The Court: All right. It correctly states my interpretation of the law.

Gentlemen, I may say that in federal court procedure it is provided that at the conclusion of the charge each side may object to any portion of the instructions.

The basis for that is that a court may make a mistake as to the law and counsel are privileged to call the error to the court's attention. It is also the only way they have of later on in further proceedings questioning the instructions.

In civil cases it is now provided it should be done outside of the presence of the jury, but in criminal cases the old provision still remains. It is within the legal rights of either side to do so, and you are not to draw any inference whatsoever from the fact that an exception is noted to an instruction.

It is for the Court to say whether the exception is good or not, and my answer to the particular exception is that the instructions stand as I have read them to you.

Now, Mr. Schumacher and Mr. Meredith, you will be excused until you are notified. I desire to thank you for your service in the matter.

May I enjoin upon you absolute^{le} secrecy in regard to the matter, not to discuss the matter until after you have learned of a verdict, then of course you are free to, but until that time your oath of secrecy still applies and you are not to make any comment to anyone as to what your conclusions might be as to any of the facts relating to the case.

Now, if you will withdraw.

(Whereupon the alternate jurors retired from the courtroom.)

The Court: And now swear the bailiffs to take charge of the jury.

(Whereupon, two bailiffs were duly sworn to take charge of the jury.)

The Court: Gentlemen, you will now retire and begin your debilerations of this case.

(Whereupon, at 3:25 o'clock p.m., the jury retired for deliberations.)

The Court: All right, gentlemen. We will stand at recess until we have word from the jury.

(Whereupon, at 3:30 o'clock p.m., a recess was taken subject to the call of the court.)

EXCEPTIONS

1. The defendant excepted to the ruling of the Court sustaining the Government's demurrer to the defendant Shaw's Plea in Abatement.

2. The defendant excepted to the ruling of the Court granting the Government's motion to strike the defendant Shaw's Plea in Abatement.

3. The defendant excepted to the ruling of the Court overruling the defendant Shaw's demurrer to Counts 1 to 16 inclusive of the indictment.

4. The defendant excepted to the ruling of the Court denying the defendant Shaw's demand for a Bill of Particulars.

5. The defendant excepted to one instruction contained in the Court's instructions and that instruction pertained to Counts 14, 15, and 16, and as given by the Court reads as follows:

"The Section of the Act which the defendant Shaw is charged with violating is Section 5(a) (2), which reads as follows:

" 'Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or *indirectly*—

" '(2) To carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.' "

In determining whether or not there has been a willful violation of this Section, as alleged in Counts 14, 15, and 16, you must determine whether or not there was a registration statement in effect as to the shares of stock of Consolidated Mines of California, whether or not such securities were ac-

tually sold to the witnesses Goodrich, Arnold and Woodruff, or any of them, and you must further determine whether or not the defendant Shaw caused any of such securities of the Consolidated Mines of California to be carried through the mails for sale or for delivery after sale.

The burden of showing an exemption from registration, if exemption is claimed, rests on the defendant. The fact that the stock sold was or was not personally owned stock is immaterial so far as the Federal Securities Act is concerned.

6. The defendant duly excepted to the ruling of the Court denying his written motion for a new trial, which motion reads as follows:

[Set forth at Page 108 of this printed Transcript of Record.]

(The sufficiency of the evidence was questioned for the first time on the motion for a new trial, except at the conclusion of the Government's testimony, and a motion to dismiss Counts 14, 15, and 16 was made, but no exception was noted to the Court's ruling, nor was the motion renewed in the form of a request for a directed verdict at the conclusion of the case, or at any time during the proceedings.)

Respectfully submitted,

MORRIS LAVINE

Attorney for Defendant and
Appellant

In the District Court of the United States in and
for the Southern District of California, Central
Division.

No. 14200-Y

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM JACKSON SHAW,

Defendant.

ORDER APPROVING BILL OF
EXCEPTIONS

An order approving the Bill of Exceptions having
been duly presented to this Court and having been
amended to correspond with the facts, is now set-
tled, signed, and made a part of the records within
the term and within the time fixed by the United
States Circuit Court of Appeals for the Ninth Cir-
cuit.

Dated: February 10th, 1942.

LEON R. YANKWICH

United States District Judge.

[Endorsed]: Lodged Jan. 27, 1942.

[Endorsed]: Filed Feb. 10, 1942.

Received copy of the within Bill of Exceptions
this January 27, 1942.

WILLIAM FLEET PALMER

United States Attorney

By MAURICE NORCOP

Assistant United States At-
torney.

At a Stated Term, to wit: The October Term 1941, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Friday the sixteenth day of January in the year of our Lord one thousand nine hundred and forty-two.

Present: Honorable Curtis D. Wilbur, Senior Circuit Judge, Presiding, Honorable Francis A. Garrecht, Circuit Judge, Honorable Albert Lee Stephens, Circuit Judge.

No. 9916

WILLIAM JACKSON SHAW,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

ORDER EXTENDING TIME TO SETTLE AND
FILE BILL OF EXCEPTIONS, AND TO
FILE ASSIGNMENTS OF ERROR.

Upon consideration of the application of Mr. Morris Lavine, counsel for appellant, and his affidavit in support thereof, and telegraphic advice of consent of the United States Attorney for an extension of time within which to settle and file the bill of exceptions in this cause, and good cause therefor appearing,

It Is Ordered that the time within which appellant may have settled and filed his bill of exceptions on his appeal herein, and file his assignments of error, be, and hereby is extended to and including January 30, 1942.

At a Stated Term, to wit: The October Term 1941, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Wednesday the twenty-eighth day of January in the year of our Lord one thousand nine hundred and forty-two.

Present: Honorable Curtis D. Wilbur, Senior Circuit Judge, Presiding, Honorable Francis A. Garrecht, Circuit Judge, Honorable William Denman, Circuit Judge.

[Title of Cause.]

ORDER EXTENDING TIME TO SETTLE AND
FILE BILL OF EXCEPTIONS.

Upon consideration of the motion of Mr. Morris Lavine, counsel for appellant, and his supporting affidavit, and stipulation of counsel for respective parties, and good cause therefor appearing,

It Is Ordered that the time within which appellant may have settled and filed his bill of exceptions on his appeal herein be, and hereby is extended to and including February 16, 1942.

[Endorsed]: No. 9916. United States Circuit Court of Appeals for the Ninth Circuit. William Jackson Shaw, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed March 13, 1942.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit
No. 9916

WILLIAM JACKSON SHAW,
Defendant and Appellant,

vs.

THE UNITED STATES OF AMERICA,
Plaintiff and Appellee.

STATEMENT OF POINTS TO BE RELIED ON,
AND DESIGNATION OF THE RECORD.

Comes now the above-named appellant William Jackson Shaw and hereby requests the Clerk of the above-entitled Court to have included in the transcript of the record the following papers:

1. The Indictment;

2. Plea in Abatement and Motion to Strike;
3. Demurrer to Plea in Abatement;
4. Demurrer to the Indictment;
5. Minutes of the Court on the Demurrer to Plea in Abatement and Motion to Strike Plea in Abatement and Demurrer;
6. Motion for a New Trial and Minutes of the Court in regard to same;
7. Judgment and Sentence;
8. Notice of Appeal;
9. Bill of Exceptions as approved and allowed by the Court;
10. Order approving and settling the Bill of Exceptions;
11. Assignment of Errors;
12. This Statement of Points to be Relied on, and Designation of the Record and Stipulation.

The above-named appellant further states that it is his intention to rely on each and every point set forth in all the assignments of errors.

Dated: April 8th, 1942.

MORRIS LAVINE,

Attorney for Appellant.

Received copy of the within this 8th day of April, 1942.

WILLIAM FLEET PALMER,

United States Attorney,

By MAURICE NORCOP.

[Endorsed]: Filed Apr. 9, 1942.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF MATTERS UPON WHICH
APPELLANT INTENDS TO RELY AND
STIPULATION AS TO RECORD.

Comes now the above-named appellant William Jackson Shaw, and states that he will rely upon the evidence in the case as set forth in the Bill of Exceptions, and all motions and points of law as set forth in the same, and on the assignment of errors, and hereby adopts as his respective points to be relied upon in this appeal all those set forth in the assignment of errors heretofore prepared and filed by him.

Dated: April 8th, 1942.

MORRIS LAVINE,
Attorney for Appellant.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION.

It Is Hereby Stipulated and Agreed by and between the Government of the United States, through United States Attorney William Fleet Palmer, by Maurice Norcop, Assistant United States Attorney, and William Jackson Shaw, through his attorney, Morris Lavine, that foregoing record will be the complete record necessary for the consideration of the appeal for both sides.

Dated: April 8th, 1942.

WILLIAM FLEET PALMER,
United States Attorney,
By MAURICE NORCOP,
Assistant United States
Attorney,
Attorney for Appellee,
MORRIS LAVINE,
Attorney for Appellant.

Received copy of the within this 8th day of April,
1942.

WILLIAM FLEET PALMER,
United States Attorney,
By MAURICE NORCOP.

[Endorsed]: Filed Apr. 9, 1942.

